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# RECRUITMENT AND HIRING

## ARRESTS AND CONVICTIONS

## IMMIGRATION AND EMPLOYMENT ELIGIBILITY

## NEW HIRE REPORTING

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## ARRESTS AND CONVICTIONS

Florida employers may generally access conviction and arrest records, criminal history, correctional and release information, and wanted persons lists. However, state law generally prohibits employers from accessing sealed records containing criminal charges or requiring applicants to admit charges contained in a sealed or expunged record.

## IMMIGRATION AND EMPLOYMENT ELIGIBILITY

### Private Employers

As of July 1, 2023, [state law](#) requires public agencies and employers with 25 or more employees to the [E-Verify](#) system to confirm the employment eligibility of new employees. Affected employers will need to certify annually to the Florida Department of Economic Opportunity (DEO) that they are in compliance with this requirement.

Employers with 24 or fewer employees that voluntarily use E-Verify may also certify their compliance annually.

Employment verification is also required for continuing employees upon contract renewal or extension.

Failure to comply with employment verification requirements may result in the revocation of state licenses for the non-complying business.

### Public Employers, State Contractors and Subcontractors

Public employers, contractors and subcontractors in Florida need to register with and use E-Verify to certify the work authorization of all newly hired employees. Public employers, contractors and subcontractors will not be allowed to enter into a government contract unless each party to the contract registers with and uses the E-Verify system.

Contractors must require any subcontractors to provide an affidavit stating that they do not employ, contract with or subcontract with unauthorized aliens. A copy of this affidavit must be maintained for the duration of the contract.

### RIDE Program

Florida is a participant in the Records and Information from Department of Motor Vehicles for E-Verify (RIDE) program. RIDE verifies the validity of driver's license and ID card information by matching the data entered by employers against participating state motor vehicle department records.

[Click here](#) for a fact sheet regarding Florida driver's license and ID card information. A [list of RIDE tips](#) is also available.

## NEW HIRE REPORTING

Florida requires private employers to submit information regarding newly hired employees, certain employees who are returning to work, and independent contractors who are paid \$600 or more in a calendar year to the Florida New Hire Reporting Center as follows:

### Reporting Requirements

Employers must report the following information for each new employee, returning employee or independent contractor within 20 days from the date of hire or reemployment (employers reporting electronically must report twice monthly between 12-16 days apart):

- Employee's (or contractor's) name, address, social security number (or other tax identification number), date of hire and date of birth (if available).
- Employer's name, address, and federal identification number.

### How to Submit Reports

Employers may report online using the Child Support Services for Employers [website](#) or they may create their own electronic new hire reports.

Employers may also submit one of the following paper reports which may be faxed or mailed to the New Hire Reporting Center:

- [New Hire Reporting Form](#);
- Form W-4 or Form W-9; or
- A printed list containing all the required information.

Employers with employees in two or more states who report electronically may designate a single state to which all new hires can be reported after notifying the federal Department of Health and Human Services of this designation.

### More Information and Resources

- [Florida New Hire Reporting Center](#)
- [Federal multistate employer new hire notification form](#)
- [Federal new hire reporting requirements](#)

# EMPLOYEE COMPENSATION AND WAGES

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- METHOD OF PAYMENT 4
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The Fair Labor Standards Act (FLSA) regulates minimum wage, overtime and work hour requirements for most employees. Florida law supplements federal regulations and in some instances provides more stringent requirements that employers must follow. The Florida [Department of Economic Opportunity](#) (DEO) enforces and investigates wage and hour violation claims in the state.

## MINIMUM WAGE

On Nov. 3, 2020, voters in Florida [approved a constitutional amendment](#) that will raise the state minimum wage rate each year until it reaches \$15 per hour in 2026. The amendment did not change the tip credit Florida allows employers to deduct from their tipped employees. Since this credit will remain at \$3.02, projected minimum wage rates for tipped employees are also included in the table below.

Effective Date	Sept. 30, 2023	Sept. 30, 2024	Sept. 30, 2025	Sept. 30, 2026
Minimum Rate (per hour)	\$12 per hour	\$13 per hour	\$14 per hour	\$15 per hour
Tipped Employee (per hour)	\$8.98 per hour	\$9.98 per hour	\$10.98 per hour	\$11.98 per hour

Beginning in 2027, the state minimum wage rate will be adjusted annually by the DEO. The Florida Minimum Wage Act (FMWA) requires the DEO to calculate a minimum wage rate each year, based on the rate of inflation for the previous 12-month period.

Florida has adopted FLSA exemptions for minimum wage payment requirements. These exemptions allow employers to pay certain individuals at rates below the minimum wage rate.

## REGULAR WORK HOURS AND OVERTIME PAY

Even though Florida recognizes a 10-hour day as a legal day's work, it has adopted the 40-hour workweek (seven consecutive calendar days) as the basis to calculate overtime pay. The hours an employee works during one workweek may not offset the hours worked in previous or future workweeks.

Overtime pay in Florida follows FLSA regulations. In general, employees are entitled to receive one and one-half times their regular wage rate for work performed during overtime hours. However, employers in Florida should be aware that the FLSA allows some exemptions for the 40-hour workweek.

## METHOD OF PAYMENT

Florida allows employers to pay employee wages with check, draft, note, payroll debit card or any other instrument as long as it is payable in cash, on demand, without discount and at no cost to the employee. Employers may not give their employees wage payment instruments when they have insufficient funds or credit to cover the payments.

Employers may also pay employee wages in cash and through electronic fund transfer (direct deposit). Employers that choose to pay employee wages through electronic fund transfer must first obtain written employee authorization for the electronic transfer and deposit wages directly into employee account at institutions of the employees' choice. Employers may not discriminate against any employee who refuses to participate in a direct deposit program.

### Payments to Deceased Employees

In the case of an employee's death, Florida requires employers to pay unclaimed wages to the employee's surviving spouse. If there is no surviving spouse, employers must pay unclaimed wages to the decedent's adult children or parents (if there are no surviving children).

Unclaimed wages are defined as compensation that an employee has not claimed for more than one year after the wages become due and payable.

## REQUIRED POSTING

Employers must post a current minimum wage notice in a prominent, conspicuous and accessible place in each establishment where employees regularly pass by and can see it.

## PROHIBITED RETALIATION

Employers may not retaliate in any manner against employees who enforce their rights under the state's wage and hour laws, including the rights to file a complaint, report or inform any person of employer wage and hour law violations and assist a third party in the investigation of wage and hour violations.

# EMPLOYEE LEAVE

## FLORIDA FAMILY AND MEDICAL LEAVE

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## JURY DUTY LEAVE

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## MILITARY LEAVE

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## CIVIL AIR PATROL LEAVE

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## WITNESS AND JUVENILE PROCEEDINGS LEAVE

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## DOMESTIC AND SEXUAL VIOLENCE LEAVE

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Employers may provide their employees with various types of paid or unpaid leave as part of their overall compensation packages, including vacation time, personal leave and sick leave. Employers have some flexibility when it comes to establishing or negotiating employee leave policies. However, federal laws, such as the Family and Medical Leave Act (FMLA), require covered employers to provide employees with leave in certain situations. In addition to those federal leave laws, Florida has its own employee leave laws regarding:

- Jury duty leave;
- Military leave;
- Civil air patrol leave;
- Witness and juvenile court proceedings leave; and
- Domestic or sexual violence leave.

## FLORIDA FAMILY AND MEDICAL LEAVE

Florida currently does not have a comprehensive family and medical leave law requiring private employers to provide leave rights greater than those required by the federal FMLA.

## JURY DUTY LEAVE

Employers must provide at least one day of leave to employees summoned to jury duty. A longer period of leave is required if the juror is assigned to a trial that lasts longer than a day.

Jury duty leave is unpaid, unless municipal law requires payment.

Job protections apply to employees taking jury duty leave.

## MILITARY LEAVE

In addition to the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), Florida law provides the following job protections for military members:

- Reemployment rights for members of the Florida National Guard following state active military duty; and
- Discrimination protections for members of the Florida National Guard or any Reserve component of the U.S. Armed Forces.

## CIVIL AIR PATROL LEAVE

Employers that employ 15 or more employees must provide up to 15 days of unpaid leave annually for participating in a Civil Air Patrol training or mission, without any loss in seniority. Employees are eligible if they were employed by the same employer for at least 90 days immediately before the leave. They must also be a senior member of the Florida Wing of the Civil Air Patrol, with at least an emergency services qualification.

Employers may not require employees on civil air patrol leave to use vacation, annual, compensatory or similar leave, but the employee on leave may opt to use any accrued paid leave. Employers are further prohibited from discharging, reprimanding or otherwise penalizing Civil Air Patrol members for taking the leave, and they may not discharge a Civil Air Patrol member for one year after the date the member returns to work, except for cause.

However, employers are not required to allow Civil Air Patrol members to return to work following leave if:

- The employer's circumstances have so changed as to make employment impossible or unreasonable;
- Employment would impose an undue hardship on the employer;
- The employment from which the member took such leave is for a brief, nonrecurring period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period; or
- The employer had legally sufficient cause to terminate the member at the time he or she commenced such leave.
- Upon completion of leave, the Civil Air Patrol member must promptly notify the employer of their intent to return to work.
- Employees may bring civil suit for violations of their right to leave, which may result in damages and attorneys' fees.

## WITNESS AND JUVENILE PROCEEDINGS LEAVE

Employers must provide unpaid leave to employees who are subpoenaed to testify in a judicial proceeding.

Job protections apply to employees taking witness leave.

## DOMESTIC AND SEXUAL VIOLENCE LEAVE

Employers who employ 50 or more employees must provide up to three work-days of domestic or sexual violence leave in any 12-month period.

Employees who have worked for their employer for at least three months are eligible for domestic violence leave to:

- Seek an injunction for protection;
- Obtain medical care, mental health counseling or both for the employee or a family or household member;
- Obtain services from a victim services organization;
- Secure the employee's home or seek new housing; or
- Seek legal assistance or attend and prepare for court-related proceedings.

Job protections and notice and certification requirements apply.

The leave may be with or without pay, at the employer's discretion. Unless the employer waives this requirement, an employee can be required to exhaust all available vacation leave, personal leave, or sick leave before taking domestic violence leave.

Except in cases of imminent danger to the health or safety of the employee or a family or household member, the employee must provide appropriate advance notice along with sufficient documentation, as required by the employer's policy.

# DISCRIMINATION

## FLORIDA CIVIL RIGHTS ACT

## FLORIDA EQUAL PAY LAW

## OTHER ANTI-DISCRIMINATION LAWS

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Federal addition to the workplace discrimination protections provided to employees under federal laws, such as Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act (ADA), Florida provides broad workplace discrimination protections to employees under the Florida Civil Rights Act (FCRA) and the Florida Equal Pay Law (FEPL).

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## FLORIDA CIVIL RIGHTS ACT

The Florida Civil Rights Act (FCRA) applies to Florida employers that have least 15 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. The FCRA is enforced by the [Florida Commission on Human Relations](#) (Commission).

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Employers that are subject to the FCRA must post and maintain a written [notice](#) regarding the law in a conspicuous place in their employees' workplaces.

### Protected Statuses

Under the FCRA, employers may not discriminate against an individual based on a protected status, which includes:

- Race;
- Color;
- Religion;
- Sex;
- Pregnancy;
- National origin (including ancestry);
- Age;
- Handicap; and
- Marital status.

### Prohibited Practices

On the basis of an individual's protected status, it is an unlawful employment practice for an employer to:

- Fail or refuse to hire or discharge the individual;
- Discriminate against the individual with respect to compensation, terms, conditions or privileges of employment or in connection with admission to, or employment in, an apprenticeship or other training program;

- Limit, segregate or classify the individual for employment in any way that would deprive him or her of employment opportunities or otherwise adversely affect their employment status; or
- Print (or cause to be printed or published) any notice or advertisement relating to employment, membership, classification, referral for employment or apprenticeship or other training that indicates a preference, limitation, specification or discrimination.

Although the FCRA does not specifically mention sexual harassment, Florida courts have concluded that sexual harassment is also considered a form of unlawful sex discrimination under the FCRA.

Finally, employers may not retaliate against an employee or prospective employee because he or she has opposed any employment practice that is unlawful under the FCRA, or because the person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under the FCRA.

### Exceptions

The FCRA does not prohibit an employer from establishing the following policies or programs:

- **Bona Fide Occupational Qualification**—Taking (or failing to take) any action on the basis of a protected class in situations where religion, sex, national origin (including ancestry), age, absence of a particular handicap or marital status is a bona fide occupational qualification reasonably necessary for the performance of the particular employment;
- **Bona Fide Seniority Systems, Benefit Plans or Merit Systems**—Observing the terms of a bona fide seniority system, a bona fide employment benefit plan (such as a retirement, pension or insurance plan) or a system which measures earnings by quantity or quality of work, as long as the system or plan is not a maneuver to evade the Civil Rights Act;
- **Anti-nepotism Policy**—Taking (or failing to take) any action on the basis of marital status if that status is prohibited under the employer's anti-nepotism policy; and
- **Training Program**—Making enrollment decisions on the basis of age for any employment or training program designed to benefit persons of a particular age group.

Also, a religious corporation, association, educational institution or society may restrict employment opportunities to its members or to persons who subscribe to its tenets or beliefs.

### Enforcement

The Commission may investigate an employer's practices on its own initiative at any time and will investigate after an employee files a charge. Employees may also file lawsuits alleging unlawful discrimination and seek injunctive relief and other remedies, such as back pay. A court may award compensatory damages for intangible injuries, such as mental anguish and loss of dignity, as well as punitive damages.

## FLORIDA EQUAL PAY LAW

Florida's Equal Pay Law (FEPL) applies to employers with two or more employees in the state. Under the FEPL, employers are prohibited from paying an employee of one gender lower wages than they pay to an employee of the opposite gender for equal work. Equal work includes jobs that require equal skill, effort and responsibility, and that are performed under similar working conditions.

However, the FEPL contains exceptions that allow employers to pay different wages to employees of opposite sexes when the payments are made pursuant to:

- A seniority system;
- A merit system;
- A system that measures earnings by quantity or quality of production; or
- Any reasonable factor other than sex when exercised in good faith.

If an employer violates the FEPL, the Florida Attorney General may sue the employer for damages, injunctive relief and civil penalties. Employees who are discriminated against in violation of the FEPL may also sue their employers. If successful, an employee may recover difference between the amount he or she was paid and the amount he or she should have been paid for a period of up to one year under the law. A court may also award costs of the action and reasonable attorney's fees.

## OTHER ANTI-DISCRIMINATION LAWS

Florida law prohibits employers from discriminating on the basis of the sickle-cell trait. Specifically, employers may not:

- Refuse employment to any person or discharge any person from employment solely because that person has the sickle-cell trait; or
- Require screening or testing for the sickle-cell trait as a condition of employment.

Florida law also prohibits employment discrimination on the basis of AIDS, AIDS-related complex and HIV status. The law provides individuals who have (or who are perceived as having) AIDS, AIDS-related complex or HIV with the same protection from employment discrimination as is available to handicapped persons.

Unless the absence of the HIV infection is a bona fide occupational qualification for the job in question, employers may not:

- Require an individual to take an HIV-related test as a condition of hiring, promotion or continued employment; or
- Discriminate against an individual based on knowledge or belief that an individual has taken an HIV-related test or the actual or perceived results of the test.

In addition, employers may not discriminate against an employee because he or she is a licensed health care worker who treats or cares for HIV-infected persons.

The law requires reasonable accommodation of otherwise qualified individuals infected with HIV. Employers asserting that such individuals are not otherwise qualified have the burden of proving that no reasonable accommodation can be made to prevent the likelihood that other individuals will be exposed to a significant possibility of infection.



# WORKPLACE VIOLENCE PREVENTION

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Workplace violence is a serious safety and health issue. While no federal law specifically addresses violence in the workplace, several laws impose a duty on employers to maintain a safe workplace.

For example, the Occupational Safety and Health Act (OSH Act) imposes a general duty on all employers to provide employees with a workplace that is free from hazards. Federal civil rights laws also require employers to keep the workplace free from threats of violence, and state workers' compensation laws hold employers responsible for injuries sustained by employees while performing job-related duties.

In addition to these requirements, Florida law also places a duty on employers to provide employees with a safe workplace.

## WORKPLACE VIOLENCE DEFINED

The National Institute for Occupational Safety and Health (NIOSH) defines workplace violence as "violent acts (including physical assaults and threats of assaults) directed toward persons at work or on duty." The Occupational Safety and Health Administration (OSHA) recognizes four different types of workplace violence:

- **Criminal Acts:** Violent acts by people, employees or former employees who enter the workplace with the intention to commit a crime;
- **Customers/Clients/Patients:** Violent acts directed at employees by individuals who enter the employer's premises to obtain some type of service;
- **Co-worker Conflict:** Violence directed at co-workers, supervisors, or managers by a current or former employee, supervisor, or manager; and
- **Personal:** Violence in the workplace by someone who does not work there, but who is known to, or has a personal relationship with, an employee.

Workplace violence is a particularly prevalent issue in healthcare and social service settings as well as late-night retail establishments.

## EMPLOYER LIABILITY IN LAWSUITS FOR INTENTIONAL INJURY

An injured employee, or a deceased employee's survivors, may sue an employer for damages if the employee's injury was caused by an act or omission of the employer that was either intended to injure the employee or that involved the employer's substantial certainty that the injury would occur.

For example, an employer might deliberately remove an equipment safety guard or deliberately misrepresent a toxic or hazardous substance. In these situations, if an employee is injured as a direct result of the removal or misrepresentation, the law presumes that the injury was caused intentionally.

Florida courts impose further obligations on employers to provide employees with a safe work environment by requiring employers to hire, train and supervise their employees properly. If an employer does not adequately hire, train or supervise its employees, the employer may be sued for negligence if the employer knew or should have known the employee would subject a coworker, customer or other third party to an unreasonable risk of harm.

## FLORIDA CONCEAL AND CARRY LAW

State law allows Florida residents and some residents of other states to obtain a license to carry concealed weapons in the state of Florida. An employer may prohibit properly licensed employees, customers or invitees from carrying a concealed weapon on the premises of the employer's business.

However, an employer may not prohibit an employee, customer or invitee who lawfully possesses firearms or ammunition from transporting or storing them in their privately-owned, locked car that is legally on the employer's premises. Employers may not even ask employees, customers or invitees whether they have firearms in their vehicles. The law also specifically prohibits employers from searching any vehicle for weapons and from taking any action against an employee, customer or invitee based upon their possession of a firearm inside a private motor vehicle in a parking lot for lawful purposes.

In addition, employers may not condition employment upon:

- The fact that an employee or prospective employee holds or does not hold a concealed weapon license; or
- Any agreement that prohibits an employee from keeping a legal firearm locked inside a private motor vehicle in a parking lot for lawful purposes.

## STATUTORILY PROHIBITED LOCATIONS

Florida law explicitly prohibits carrying concealed weapons in the following locations:

- Schools;
- Correctional facilities;
- Nuclear-powered electricity generation facilities;
- Properties where substantial activities involving national defense, aerospace or homeland security are conducted;
- Properties used in the manufacture, use, storage, or transportation of combustible or explosive materials, including properties owned by employers who are licensed to engage in the business of importing, manufacturing, or dealing in explosive materials on that property;
- Motor vehicles owned, leased or rented by any employer; and
- Where otherwise prohibited by state or federal law.

## IMMUNITY

As long as an employer complies with Florida law, it will generally be immune from civil liability based on any action or inaction with respect to concealed weapons or concealed firearms.

Regardless of whether an employer decides to allow or prohibit weapons on their premises, however, the employer should revise all company policies and its employee handbook to ensure the employer's concealed weapons policy is properly conveyed to employees.

## WORKPLACE VIOLENCE PLAN IMPLEMENTATION FOR EMPLOYERS

Although Florida does not have a statute or a regulation specifically governing workplace violence, employers in the state are still required to keep employees free from harm in the workplace. Employers may be liable for incidents of workplace violence under both federal and state law for failure to provide employees with a safe workplace.

Employers can create a workplace violence plan to outline policies and processes that can help prevent workplace violence. If an employer elects to have a workplace violence plan, the plan will be most effective if it is tailored to the individual needs and circumstances of the employer. It should take into

account the resources available to the employer to enact and maintain the program.

A workplace violence policy may include the following items:

- A statement summarizing the employer's workplace violence policy and its relation to other policies the employer has enacted;
- Standard practices to address workplace violence or threats of violence;
- Designation and training of an incident response team;
- Clearly stated disciplinary procedures designed to prevent violent behavior in the workplace;
- Procedures for workplace violence that will handle all levels of violence;
- Reference to sources outside of the workplace that employees may consult to deal with workplace violence; and
- An effective training program to inform employees of the workplace violence policy.

# WORKPLACE SMOKING RESTRICTIONS AND DRUG TESTING

## SMOKING IN THE WORKPLACE

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## DRUG AND ALCOHOL TESTING

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A growing number of states have passed laws requiring employers to prohibit smoking in the workplace. Texas law doesn't specifically address smoking in private workplaces. However, Texas law does prohibit smoking in certain specified places.

### SMOKING IN THE WORKPLACE

A growing number of states have passed laws requiring employers to prohibit smoking in the workplace. Florida's Indoor Air: Smoking and Vaping Act (The Act) regulates smoking and vaping in enclosed indoor workplaces.

[The Florida Department of Health](#) (DOH) and [Department of Business and Professional Regulation](#) (DBPR) are responsible for enforcement of the Act. The DBPR monitors compliance in restaurants, bowling centers, dog tracks, horse tracks, bars, billiards, bingo halls (with food service) and civic/fraternal organizations. The DOH enforces compliance with the Act in all facilities not regulated by DBPR.

#### Where Are Smoking and Vaping Prohibited?

Smoking and vaping are prohibited in enclosed indoor workplaces, meaning any place where one or more people engage in work that is predominantly bounded by physical barriers.

Smoking and vaping are prohibited in enclosed indoor workplaces, meaning any place where one or more people engage in work that is predominantly bounded by physical barriers, including:

- Public & private workplaces;
- Tenant buildings;
- Shopping malls;
- Child or adult care centers;
- Convenience stores;
- Beauty or barber shops;
- Warehouses;
- Public libraries;
- Auditoriums or theaters;
- Health care facilities; and
- Educational facilities.

The Act specifically excludes any facility owned or leased by, and used exclu-

sively for noncommercial activities performed by the members and guests of, a membership association. Noncommercial activities include social gatherings, meetings, dining, and dances, if no person or persons are engaged in work.

#### Exemptions

Smoking or vaping or both may be authorized in the following areas:

- Private residences, except during the hours of operation as a child, adult or health care facility;
- Retail tobacco shop;
- Retail vape shop;
- Designated guest rooms at a public lodging establishment;
- A stand-alone bar, if less than 10% of revenue is from food sales;
- A smoking or vaping cessation program, medical, or scientific research, to the extent that tobacco smoking or vaping is an integral part of the program, or research (must still comply with signage requirements); and
- A customs smoking or vaping room in an airport in-transit lounge.

#### Compliance

The Florida Indoor Air: Smoking and Vaping Act has additional requirements for employers regarding enforcement of the Act and posting of signs.

#### Enforcement

Employers/owners must develop and implement a policy regarding smoking and vaping prohibitions at the workplace, including a policy that prohibits an employee from smoking or vaping or both in the enclosed indoor workplace.

#### Signs

Employers/owners may, at their discretion, post signs to indicate that smoking or vaping, or both, are prohibited.

Any person in charge of an airport terminal that includes a designated customs smoking and vaping room is required to post a conspicuous sign clearly stating that smoking and vaping are prohibited except in the designated customs smoking room located in the customs area of the airport. Signs must have letters of reasonable size which can be easily read.

In any enclosed indoor workplace where a smoking or vaping cessation program, medical research, or scientific research is conducted, signs must be conspicuously posted stating that smoking and vaping are permitted for these scientific or medical purposes in designated areas in the enclosed indoor workplace. Signs must have letters of reasonable size, which can be easily read.

## DRUG AND ALCOHOL TESTING

Florida does not have a general law regulating drug and alcohol testing of employees and applicants by private employers. However, Florida employers should consider other state laws when establishing any workplace drug or alcohol testing program. This Employment Law Summary provides a general overview of Florida's state law provisions that relate to workplace drug and alcohol testing.

### Legalized Marijuana

Under Florida's Medical Use of Marijuana Act (MUMA), certain individuals, called "qualified patients" are permitted to possess and use marijuana for medical purposes. The MUMA specifies, however, that it does not:

- Allow qualified patients to use marijuana in their places of employment, except when permitted by their employers;
- Limit the ability of an employer to establish, continue or enforce a drug-free workplace program or policy;
- Require an employer to accommodate the medical use of marijuana in any workplace or any employee working while under the influence of marijuana; or
- Create a cause of action against an employer for wrongful discharge or discrimination.

Therefore, in general, the MUMA does not place any restrictions on an employer's ability to maintain a drug-free workplace in the state.

### Premium Discounts

Florida's workers' compensation law allows employers to qualify for a five percent discount on their workers' compensation and employer's liability insurance premiums by implementing a drug-free workplace program in accordance with certain requirements. For most employers, this program is voluntary. However, an employer must establish a program if it contracts with the state government or local governments to provide construction, electrical or alarm system work.

### General Requirements

To qualify for the premium discounts, an employer must establish a drug-free workplace program that requires:

- Job applicants to submit to testing following an offer of employment;
- Employees to submit to reasonable suspicion testing;
- Employees to submit to routinely scheduled employee fitness-for-duty testing; and

- Employees to submit to follow-up testing following their entrance into an employee assistance program or drug rehabilitation program (unless an employee voluntarily enters a program, then follow-up testing is optional).

Random testing is also allowed, though not required, for an employer to qualify for the premium discounts.

### Written Policy Statement Requirements

An employer's drug-free workplace program must be outlined in a written policy statement that includes all of the following:

- A general statement of the employer's policy on employee drug use, identifying;
- The types of testing an employee or applicant may be required to submit to;
- A list of all drugs that the employer will test for;
- A list of the most common medications which may alter or affect a drug test (available upon request from the Agency for Health Care Administration); and
- The actions the employer may take on the basis of a positive confirmed test result;
- A statement advising employees or applicants of Florida's drug-free workplace program rules;
- A general statement concerning confidentiality;
- The consequences of refusing to submit to testing;
- A list of employee assistance programs and local rehabilitation programs; and
- A statement that an employee or applicant may contest or explain any positive confirmed test result within five working days after written notification of the result.

### Notice Requirements

Before conducting any workplace testing under a drug-free workplace program, an employer must:

- Provide copies of its written policy statement to all employees at least 60 days in advance;
- Make its written policy statement available for inspection during regular business hours in its personnel office or other suitable locations;
- Provide a testing notice on all vacancy announcements for positions that are subject to testing; and

- Post notices of their testing policies in conspicuous locations within their employee's workplaces.

In addition, any individual who an employer requires to undergo testing must be given a form to provide any information relevant to the test, such as identification of currently or recently used prescription or non-prescription medication and any other medical information. This form must also give notice of the most common medications that may alter or affect a drug test. Finally, for all testing based on reasonable suspicion, an employer must disclose in writing the circumstances that led to the reasonable suspicion. A copy of the disclosure must be given to the employee upon request, and the original disclosure must be kept confidential and retained by the employer for at least one year.

### Medical Review Officer Requirement

An employer's drug-free workplace program must use a medical review officer (MRO) for all workplace drug and alcohol testing. An MRO is a licensed physician who acts as an agent of the employer to review all positive tests with an employee or applicant before the employer is advised of the results.

### Testing Procedures

To qualify for the workers' compensation premium credit, an employer's testing procedures must have all specimens tested in a laboratory that is certified by either the U.S. Department of Health and Human Services (HHS) or the Florida Agency for Health Care Administration, using chain of custody procedures to ensure proper recordkeeping, handling, labeling and identification. An employer's program may include testing for any of the following substances:

- Alcohol;
- Amphetamines;
- Cannabinoids (THC or marijuana);
- Cocaine;
- Opiates;
- Phencyclidine (PCP);
- Hallucinogens;
- Methaqualone;
- Barbituates;
- Benzodiazepine;
- Synthetic narcotics; and
- Designer drugs.

Employers must pay the cost of any initial and confirmation drug tests that it requires. An employee or applicant must pay the cost of any additional drug tests that are not required by the employer. All initial positive test results must be verified by a confirmation test and by an MRO before they are reported to an employer. If an initial test has a negative result, the employer may seek a confirmation test in its sole discretion. An employee or applicant must be permitted to contest or explain any positive confirmed test result to the MRO within five days after written notification of the test result, including submitting any information that he or she considers relevant to the test (such as disclosure of recently used prescription or nonprescription medication). If the explanation is unsatisfactory to the MRO, the MRO will report the confirmed positive test result to the employer.

#### *Employee Protections*

An employer may not discharge, discipline or discriminate against an employee for voluntarily seeking drug or alcohol treatment, as long as the employee has not previously:

- Tested positive for drug or alcohol use;
- Entered into an employee assistance program for drug- or alcohol-related problems; or
- Entered into a rehabilitation program.

Likewise, an employer may not take any adverse employment action against an individual on the sole basis of a positive test result, unless the test has been verified by a confirmation test and an MRO. However, an employer may discharge or discipline an employee, or refuse to hire an applicant, who:

- Refuses to submit to a lawful drug or alcohol test; or
- Receives a confirmed positive test for:
  - An illegal drug or alcohol; or
  - A prescription medication for which the individual does not hold a valid prescription.

# NOTICES AND POSTERS

## ALL EMPLOYERS

## EMPLOYERS THAT RECEIVE FEDERAL FINANCIAL ASSISTANCE

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This document provides direct links to the workplace posters employers are required to display under state law. These posters, including official translated versions, are created and updated by state agencies. Employers must also comply with all applicable federal posting requirements.

Employers must display required posters in a public place where employees can easily access them. While most posters apply to all employers within the state, some may apply to specific industries or employers. Employers can review each poster description to determine whether they are required to display that particular poster.

## ALL EMPLOYERS

The following posters are required for all employers in Florida:

### Anti-discrimination poster

[English/Spanish](#)

### Clean Indoor Air Act

The person in charge of an enclosed indoor workplace may, at his or her discretion, post “NO SMOKING” signs as deemed appropriate. Establishments where smoking is permitted may also be [required to post signs](#).

### Minimum wage poster

[English](#) | [Spanish](#) | [Additional Languages](#)

### Re-employment assistance program poster (unemployment compensation)

[English](#) | [Spanish](#)

### Workers’ compensation notice

[English](#) | [Spanish](#)

### Workers’ compensation anti-fraud notice

[English](#) | [Spanish](#)

## EMPLOYERS THAT RECEIVE FEDERAL FINANCIAL ASSISTANCE

### Equal opportunity notice

This poster should be printed on 8.5-by-14-inch paper.

[English](#) | [Spanish](#)

### Employers that Hire Minors

The following poster applies to employers that hire underage workers:

### Child labor laws

[English](#)

# RECORDKEEPING REQUIREMENTS

## CHILD LABOR

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## EMPLOYEE LEAVE

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## ENFORCEMENT

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## WORKERS' COMPENSATION

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## FARM LABOR CONTRACTORS

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Federal laws, such as the Federal Insurance Contribution Act, the Fair Labor Standards Act and the Equal Pay Act and the Civil Rights Act, prescribe the type of employment records employers must create and maintain. Florida law also imposes several recordkeeping requirements on employers. State recordkeeping laws operate in addition to or in conjunction with the federal requirements.

This section provides a general overview of recordkeeping requirements that apply to most employers in Florida under state law. Additional state and federal recordkeeping requirements may exist for specific industries. Consult with state governmental agencies for more information about recordkeeping requirements that may affect your business.

## UNEMPLOYMENT COMPENSATION

Florida's unemployment compensation law requires employers to maintain true and accurate business and personnel records for at least five years. These records must be open to inspection and made available for duplication by the Florida Department of Economic Opportunity. An employer's records must include the following information about each of its employees:

- Name and Social Security number;
- Place of employment within the state (county);
- Beginning and ending dates for the pay periods when the employee actually worked;
- Compensation statements (pay periods, pay dates, wage rate and either number of hours worked or pieces completed);
- Date of hire, re-hire and return to work;
- Special payments of any kind (bonus, gift, prize) and a reasonable description and cash value of remuneration other than wages; and
- The address of each location where payroll records are maintained.

## CHILD LABOR

Employers that employ children must maintain proof of each child's age. To satisfy this requirement, employers can make a copy of the employee's birth certificate, driver's license, age certificate (issued by school district where the child attends school), passport or visa. Employers must keep these records for as long as a minor is employed.

## EMPLOYEE LEAVE

Employers are also required to track and document employee leave, whether paid or unpaid, including military deployment, sick leave, jury duty and any other witness or court proceeding leave.

## ENFORCEMENT

Employers that knowingly provide incorrect statements, make false representations or fail to disclose a material fact to obtain, increase, decrease or prevent others from collecting unemployment benefits may be charged with a third-degree felony, which is punishable by up to five years of imprisonment (10 years for habitual or violent offenders), a fine of up to \$5,000 or both. Each incorrect statement, false representation or failure to disclose is considered a separate offense.

## WORKERS' COMPENSATION

Florida's workers' compensation law requires employers to make and keep certain records about each of their employees, along with records of any work-related employee injuries or diseases. Employers must keep these records open for inspection the Florida Division of Workers' Compensation (FDWC) for at least two years after the calendar year that follows the date the records pertain to. These records must be kept in their original form (paper, film, machine readable electronic material or any other media). However, legible copies of the originals may be considered acceptable substitutes. The employment records an employer must keep must include the following for each individual whom the employer pays or owes remuneration to (including individuals working under employment appointments, contract-for-hire employees and apprentices):

- Name and Social Security Number, Federal Employer Identification Number or IRS Tax Identification Number;
- Each day, month, and year or pay period when the employer engaged the individual in employment;
- Amount of remuneration paid or owed by the employer for work or service performed by the individual;
- The day, month, and year of work or service and the number of hours worked by the individual during each pay period (if paid on an hourly basis);

- An explanation of how compensation is calculated for the individual (if other than hourly rate);
- All checks or other records provided to the person for salary, wage or earned income;
- All Form 1099 Miscellaneous Income and Form W-2 Wage and Tax Statements issued to the individual;
- All written contracts or agreements between the employer and the individual that describe the terms of employment; and
- All employment and unemployment reports filed pursuant to Florida law.

The workers' compensation law also requires each employer to maintain the following:

- The IRS form that assigns a Federal Employer Identification Number to the employer;
- Records that identify the employer's business name (including fictitious name registrations);
- Records that identify the business form (corporation, limited liability company or partnership);
- Copies of the employer's articles of incorporation or organization, occupational licenses, trade licenses or certifications and competency cards;
- Tax records filed with the Internal Revenue Service (with supporting records and schedules);
- Account records, including monthly, quarterly and annual statements for all open or closed business accounts established by the employer or on its behalf with any credit card company or any financial institution;
- Disbursement record, such as a journal of its check and cash disbursements as well as a copy of each cashier's check, bank check and money order, indicating chronologically the disbursement date, to whom the money was paid, the payment amount, and the purpose;
- Subcontractor invoices received from a subcontractor for work or service performed by the subcontractor for the employer;
- Workers' compensation insurance policies and certificates of election to be exempt (as applicable);
- All complete written contracts executed between the employer and a general contractor, subcontractor, independent contractor or employee leasing company (must specify the terms of reimbursement and performance of any work or service while engaged in any employment under any appointment or contract for hire or apprenticeship; and

- Any records that establish the statutory elements of independent contractor classification for each worker who claims to be or who the employer claims to be an independent contractor and not an employee under the workers' compensation law.

## FARM LABOR CONTRACTORS

Farm labor contractors must maintain accurate daily field records of each employee that is actually paid. The records must contain the hours each individual worked, the number of units harvested (if paid by unit) and the employee's wage rate.



# FLORIDA

## EMPLOYMENT LAW GUIDE

*The materials in this State Employment Law Guide are provided as a general reference resource. The guide is not meant to be exhaustive or construed as providing legal or any other professional service or advice. Additional requirements may apply under federal and local laws. Employers are advised to work with experienced legal counsel to implement policies, practices and procedures necessary for compliance.*