

Employment: North America 2021



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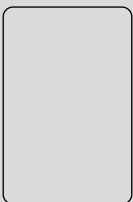
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Employment: North America

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Lexology Getting The Deal Through is delighted to publish the second edition of *Employment: North America*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Iowa.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise.



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United States – Mississippi

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STATE SNAPSHOT

Key considerations

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

Mississippi has few state-specific employment laws and few companies are unionized. It is a right-to-work state, which means that participation in any union is voluntary and cannot be made a condition of employment. As a general rule, employment is at will, meaning that an employer may terminate an employee for any reason, subject to a few exceptions.

Despite the lack of unique laws, there is an active employment litigation docket in the state. Numerous employment cases are tried to verdict each year and the Equal Employment Opportunity Commission is highly involved.

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

As there is little state-level regulation of employment and few workplaces are unionized, labor costs in Mississippi are relatively low. Most of the jobs in Mississippi are hourly and at a low rate. Agriculture is a large industry in the state and affects how the Fair Labor Standards Act is applied.

The racial make-up and history in the state lends itself to race discrimination being added to many employment disputes. Mississippi's history as a plaintiff-friendly forum also makes some plaintiff lawyers more willing to take cases to trial.

Mississippi has had several high-profile immigration raids in recent years, of which agricultural businesses have been the primary targets.

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

Employers must be familiar with Fair Labor Standards Act exemptions, both for managers and for industry-specific areas (e.g., agriculture).

Employers must be vigilant in documenting disciplinary actions and adverse employment actions. That will assist in defending discrimination matters.

All employers must ensure that their I-9 procedures are enforced and well documented.

Emerging issues

4 | 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?

N/A.

Proposals for reform

5 | Are there any noteworthy proposals for reform in your state?

Mississippi state government has passed laws that protect businesses from being sued for gender identity and sexual orientation discrimination suits if they have a legitimate religious objection. It is unclear how the state may react if the federal laws are interpreted to protect those categories under Title VII.

Mississippi citizens voted to legalize medical marijuana through a ballot initiative, but the Mississippi Supreme Court struck down the initiative process as unconstitutional. It is unclear whether the issue will be voted on again by the legislature.

Mississippi tends to be in favor of open-carry legislation and has extended the right to have a gun in a trunk on an employer's premises. It is unclear if the state will expand that right.

EMPLOYMENT RELATIONSHIP

State-specific laws

6 | What state-specific laws govern the employment relationship?

Mississippi has a right-to-work statute and an employment-at-will statute. Mississippi also has an e-verification statute for I-9 compliance.

7 | Who do these cover, including categories of workers?

N/A.

Misclassification

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

No.

Contracts

9 | Must an employment contract be in writing?

Unless an employment contract is in writing, it is presumed to be at will.

10 | Are any terms implied into employment contracts?

There are no applicable Mississippi laws, other than the general rule that all contracts include an implied covenant of good faith and fair dealing.

11 | Are mandatory arbitration agreements enforceable?

There are no applicable Mississippi laws on this issue.

12 | How can employers make changes to existing employment agreements?

No Mississippi rules specifically address changes to employment agreements. As a matter of general contract law, any relevant terms of the written contract regarding amendments to the existing agreement will apply.

HIRING**Advertising****13 | What are the requirements relating to advertising open positions?**

There are no applicable Mississippi laws on this issue.

Background checks**14 | (a) Criminal records and arrests**

Mississippi has no state laws regulating background checks other than that expunged arrest or conviction records need not be disclosed when responding to an inquiry.

15 | (b) Medical history

There are no state laws on medical history.

16 | (c) Drug screening

Mississippi's alcohol and drug testing statute is voluntary for private employers (Mississippi Code Ann. § 71-7-1 to 71-7-31). In order to opt in to the statute's drug-testing protocol, employers must give written notice of their election to be covered by the statute to all employees and applicants, specifically identifying the applicable Mississippi Code section. The statute contains detailed requirements for the content of this notice.

17 | (d) Credit checks

There are no specific state laws on credit checks used for employment screening.

18 | (e) Immigration status

Mississippi has an e-verification "safe harbor" law available to employers for I-9 compliance.

19 | (f) Social media

N/A.

20 | (g) Other

N/A.

WAGE AND HOUR**Pay****21 | What are the main sources of wage and hour laws in your state?**

There are no state-specific wage and hour laws, other than certain anti-quoted child labor laws. The federal Fair Labor Standards Act is the applicable legal framework.

22 | What is the minimum hourly wage?

The minimum hourly wage is the same as the federal wage.

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

Employers must comply with the Fair Labor Standards Act.

Hours and overtime**24 | What are the requirements for meal and rest breaks?**

There are no state-specific laws in this regard.

25 | What are the maximum hour rules?

There are no state-specific laws in this regard.

26 | How should overtime be calculated?

There are no state-specific laws in this regard.

27 | What exemptions are there from overtime?

There are no state-specific laws in this regard.

Record keeping**28 | What payroll and payment records must be maintained?**

There are no state-specific laws in this regard.

DISCRIMINATION, HARASSMENT AND FAMILY LEAVE**What is the state law in relation to:****PRIVACY IN THE WORKPLACE****Privacy and monitoring****29 | What are employees' rights with regard to privacy and monitoring?**

There are no Mississippi laws regarding employee privacy and monitoring.

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

There are no applicable Mississippi laws in this regard.

Bring your own device**31 | What is the latest position in relation to bring your own device?**

There are no state-specific laws on this subject.

Off-duty**32 | To what extent can employers regulate off-duty conduct?**

There are no applicable Mississippi laws in this regard.

Gun rights

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

By statute, employers may not enact policies that prohibit employees from storing a firearm in a locked vehicle in a parking area on the employer’s premises. If an employer prohibits employees from keeping firearms in their locked vehicles and terminates an employee for violating such a policy, the employee may have a cause of action for wrongful termination.

TRADE SECRETS AND RESTRICTIVE COVENANTS

Intellectual Property

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

Mississippi has adopted the Uniform Trade Secrets Act. The statute does not address who owns IP rights created by employees during the course of their employment.

Restrictive covenants

35 | What types of restrictive covenants are recognized and enforceable?

Under Mississippi law, non-compete covenants are valid and enforceable as long as they are reasonable as to time and scope. This is a fact-specific inquiry, and the courts examine:

- the timeframe of the restriction;
- the geographic reach of the agreement;
- any ambiguities in the covenants; and
- the relative degree to which the covenants would impose unfair hardship on either the employee or the employer under the circumstances.

Non-compete

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

There are no specific rules regarding non-competes for particular classes of employee, although the courts have considered the nature of an employee’s work in determining whether a covenant is reasonable under the circumstances.

LABOR RELATIONS

Right to work

37 | Is the state a “right to work” state?

Yes. By statute, membership or non-membership in a union may not be made a condition of employment. An employee’s participation in a union and payment of dues is voluntary (Mississippi Code Ann. § 71-1-47).

Unions and layoffs

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

Other than stray trade unions, there is little union activity in Mississippi. There are no “closed shops.”

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

There are no state-specific laws regarding layoffs. The federal Worker Adjustment and Retraining Notification Act is the only applicable legal framework.

DISCIPLINE AND TERMINATION

State procedures

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

There are no applicable Mississippi state laws in this regard.

At-will or notice

41 | At-will status and/or notice period?

Mississippi is an at-will employment state. There is no legally required notice period for terminating an employee.

42 | What restrictions apply to the above?

The Mississippi courts recognize two limited public policy exceptions to the at-will employment doctrine. Employees may bring a wrongful termination claim if the employment action was based on their:

- refusal to participate in illegal activity; or
- reporting of the illegal activity of their employer or anyone else (see *McArn v. Allied Bruce-Terminix Co.*, 626 So.2d 603 (Mississippi 1993)).

Mississippi statutes also protect employees from termination on the basis of:

- jury service (Mississippi Code Ann. § 13-5-35);
- military service (Mississippi Code Ann. § 33-1-15); and
- garnishment of wages to pay child support (Mississippi Code Ann. § 93-1-111(9)).

Final paychecks

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

Mississippi law requires certain employers to pay their employees at least twice a month. This requirement applies to employers that are:

- engaged in manufacturing and have 50 or more employees; or
- a public service corporation (Mississippi Code Ann. § 71-1-35).

Other than this requirement, there are no state-specific laws regarding final employee paychecks.

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