

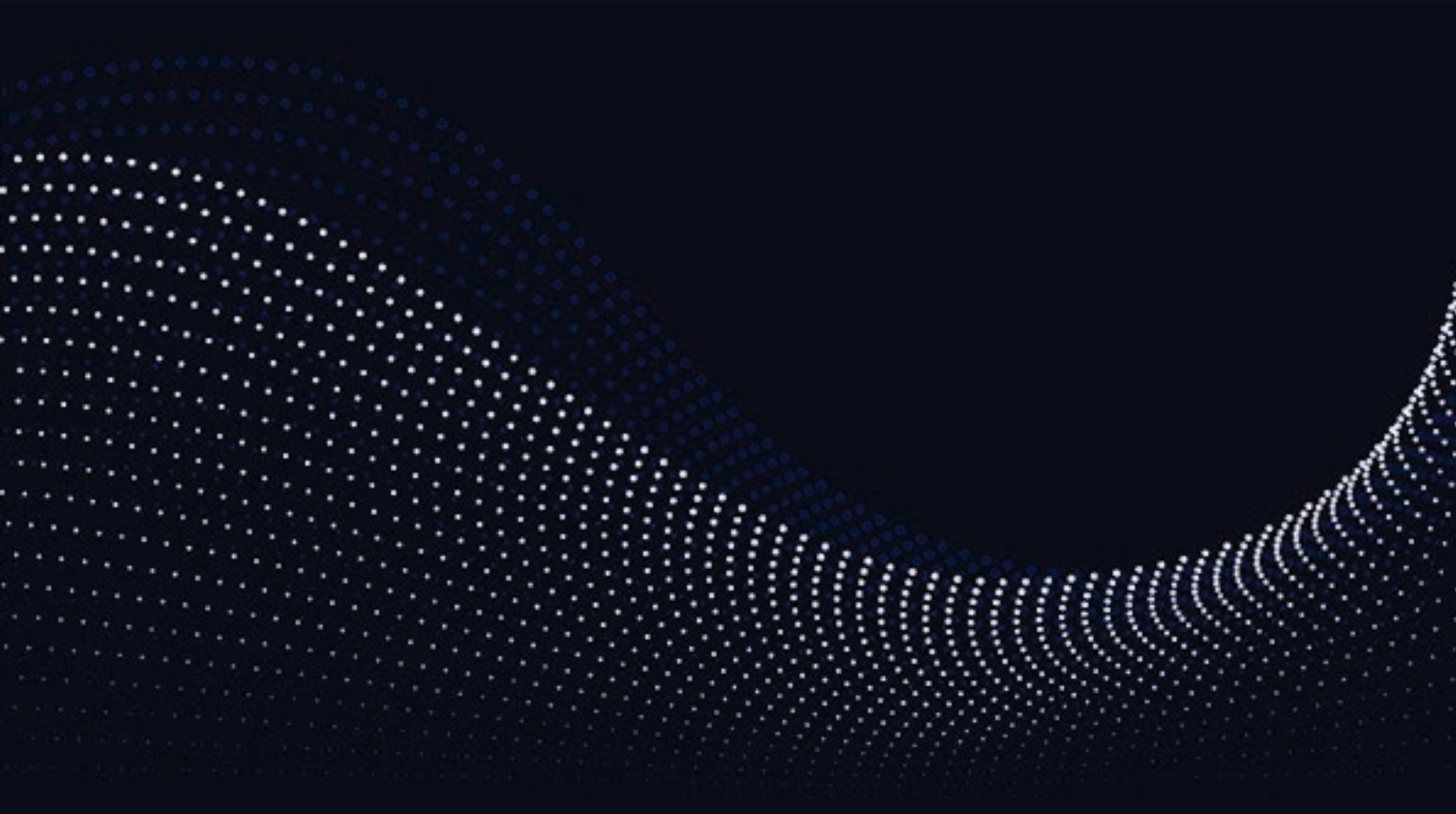


LEXOLOGY

Getting The Deal Through

EMPLOYMENT: NORTH AMERICA 2023

Contributing Editor



Employment: North America 2023

Consulting Editor

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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USA - Wyoming

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STATE SNAPSHOT

Key considerations

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

In many aspects of labor and employment law, Wyoming follows federal law. Highlights of some key state law differences include:

- Wyoming prohibits the termination of an employee without cause for one year after the employee returns from a military leave of absence.
- Employers cannot require employees or prospective employees to refrain from using tobacco products off duty, or discriminate against an employee for use of tobacco products outside of their employment.
- Although not addressed in state law, sexual orientation and gender-identity discrimination are prohibited in the city of Laramie for employers who do business with the city, and in the town of Jackson for employers generally.
- Wyoming has a “state monopoly” workers compensation system. Participation is required for employers in “extrahazardous” industries, and other employers can opt into the system. Employers pay a risk-based premium calculated as a percentage of payroll, and all claims management and benefits are administered through the state.
- Wyoming has a short-time compensation program that allows workers whose hours are reduced by their employer to apply for partial unemployment benefits. Employers must apply for the program in order to be eligible and will be subject to specific reporting requirements. No workers can be laid off if an employer wants to participate in the program. Benefits are paid only if a worker’s hours are reduced by between 10 and 60 per cent.

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

Unlike most other states, Wyoming has no individual or corporate income taxes. It has a state sales tax of 4 per cent and permits local governments to collect up to an additional 2 per cent, if approved by voters.

Wyoming’s economy is driven by energy and mineral extraction (e.g., oil, gas, coal, and wind), tourism, agriculture, and government jobs.

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

Employment in Wyoming is presumed to be at will. Practitioners generally should plan to comply with federal labor and employment laws, but be aware of those areas where Wyoming law may differ—for example:

-

Wyoming is strongly at-will, provided employers avoid compromising that status through probationary periods, policies, promises or courses of dealing that imply job security or that termination will be only for cause. Employers should proactively use at-will disclaimers in applications, offer letters and employee handbooks;

- protections against discrimination based on off-duty use of tobacco products;
- restrictions on terminating employees who have returned from military leave; and
- the local ordinance in the city of Laramie that protects against sexual orientation and gender-identity discrimination for employers who do business with the city, and the town of Jackson ordinance that applies to employers generally.

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?

Wyoming's gender wage gap is one of the largest in the nation. Recent legislative proposals on wage transparency and the use of salary history in hiring were unsuccessful, primarily because of the multifaceted cause of the wage gap.

Attempts to raise the Wyoming minimum wage have repeatedly failed to achieve legislative support.

Wyoming has not legalized marijuana for any purpose. Numerous bills continue to be considered by the Wyoming legislature but have not yet passed. The legislature recently decriminalized the sale and use of CBD oil, but has not addressed any employment-related aspects of CBD use.

Proposals for reform

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

None.

EMPLOYMENT RELATIONSHIP

State-specific laws

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

Title 27 of the Labor and Employment Wyoming Statutes contains the majority of the laws governing employer-employee relationships, including:

- payment of wages;
- fair employment practices;

- unemployment; and
- workers' compensation.

Wyoming's Administrative Rules govern:

- labor standards;
- unemployment issues;
- workers' compensation; and
- other employment-related rules.

Most applicable rules can be found under rules for the Department of Workforce Services.

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

These laws generally cover employees. Some provisions, including fair employment practices laws, also apply to applicants for employment.

Misclassification

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

Wyoming has no specific independent contractor misclassification law. Past efforts to enact such a law have failed to garner sufficient votes in the Wyoming legislature.

For both workers' compensation and unemployment purposes, an "independent contractor" is defined as an individual who performs services for another individual or entity and:

- is free from control or direction over the details of the performance of services by contract and by fact;
- represents their services to the public as a self-employed individual or independent contractor; and
- can substitute another person to perform their services (Wyo. Stat. §27-14-102(xxiii); §27-3-104).

Contracts

9 | Must an employment contract be in writing?

No, an express contract for employment may be made either orally or in writing (*Finch v. Farmers Co-Op Oil Co. of Sheridan*, 2005 WY 41, 109 P.3d 537 (Wyo. 2005)). However, an employment agreement that by its terms is not to be performed within one year of making

the agreement must be in writing to be enforceable (Wyo. Stat. §1-23-105; *Finch v. Farmers Co-Op Oil Co. of Sheridan*, 2005 WY 41, 109 P.3d 537 (Wyo. 2005)).

Employee handbooks, personnel policies, letters of employment, performance evaluations, and a course of dealing may constitute an implied employment contract, absent a clear and conspicuous disclaimer stating that the handbook or policies do not establish, and are not to be implied to create, a contract (*Trabing v. Kinko's, Inc.*, 2002 WY 171, 57 P.3d 1248 (Wyo. 2002)).

10 | Are any terms implied into employment contracts?

All employment relationships in Wyoming are based on a contract. Unless otherwise addressed in an express contract, all employment contracts in Wyoming are presumed to be at will. Every employment contract contains an implied covenant of good faith and fair dealing, whether at will or for cause (*Wilder v. Cody Cty. Chamber of Comm.*, 868 P.2d 211 (Wyo. 1994)). Also, if an employer promises employment for a specified time, makes statements limiting the circumstances under which employment can be terminated, or publishes rules or policies which imply that employment will be terminated only for cause, an implied contract may arise which negates the usual presumption of at-will employment.

11 | Are mandatory arbitration agreements enforceable?

Under Wyoming law, a written agreement to submit any existing or future controversy to arbitration is valid, enforceable, and irrevocable, except on grounds which exist for the revocation of the contract. This includes arbitration agreements between employers and employees or between their respective representatives (Wyo. Stat. §1-36-103).

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

At-will employment agreements, whether written, verbal or implied, may be modified at the employer's discretion. *Preston v. Marathon Oil Company*, 277 P.3d 81 (Wyo. 2012). If an employment contract includes terms negating the at-will presumption, the employer must give consideration to the employee to reinstate at-will employment (*Brodie v. Gen. Chem. Corp.*, 112 F.3d 440 (10th Cir. 1997)).

Oral modifications of an existing contractual agreement are permissible. However, the general rule is that if an original agreement was required to comply with the statute of frauds, any material modification of that agreement must also conform to the statute of frauds (*Roussalis v. Wyoming Med. Ctr.*, 4 P.3d 209, 242 (Wyo. 2000)).

HIRING

Advertising

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

Wyoming has no law related to advertising open job positions. Employers must comply with the anti-discrimination provisions of the Wyoming Fair Employment Practices Act (Wyo. Stat. §27-9-105.3).

Background checks

WAGE AND HOUR

Pay

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

Chapter 4 of Title 27 of the Wyoming Labor and Employment Statutes on Wages.

22 | What is the minimum hourly wage?

In 2022, Wyoming's minimum wage is \$7.25 per hour. This is the same as the federal minimum wage. Employees receiving tips of at least \$30 per month can be paid a cash wage of \$2.13 per hour, if the cash wage and tips total at least the hourly minimum wage. Workers under 20 years of age can be paid a training wage of \$4.25 per hour for the first 90 days of employment (Wyo. Stat. §27-4-202).

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

An employee voluntarily or involuntarily terminated from employment must be paid all wages due no later than the employer's regularly scheduled payroll date (Wyo. Stat. §27-4-104). On a temporary layoff or suspension of work due to a labor dispute, affected employees must be paid all wages due on the next regular payday (Wyo. Stat. §27-4-101(d)).

In general, deductions from wages are permitted as required by law or court order, or with written authorization by the employee in accordance with the state's offset rules—for example, for:

- union dues;
- contributions to health, welfare, retirement, or other benefit plans;
- deposits to a financial institution; and
- the cost of tools, equipment, uniforms, and other items (Wyo. Stat. §27-4-101; Wage Offset Rules, Ch. I, Sec. 6(b)).

Deductions are permitted for damages caused by the employee's negligence or for cash shortages under certain conditions (Wyo. Stat. §27-4-116; Wage Offset Rules, Ch. I, Sec. 6(b)).

All deductions from wages for each pay period must be shown on an itemized statement (Wyo. Stat. §27-4-101).

Accrued vacation or paid time off need not be paid out on termination if the employer's written policies provide that accrued vacation is forfeited upon termination, and the written policies are acknowledged in writing by the employee. (Wyo. Stat. § 27-4-501(a)(iii).

Hours and overtime

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

Wyoming law does not require that employers provide meal or rest breaks. If employers choose to provide meal or rest periods, they should determine whether such periods must be paid under the Fair Labor Standards Act.

25 | What are the maximum hour rules?

Employers in Wyoming generally can require employees to work any length of a working day and can discipline or terminate employees who do not perform duties or hours as assigned. An exception exists for state and county employees and mining employees (Wyo. Stat. §27-5-101, 102). Also, employees on state and local public works projects cannot be required to work more than eight hours per day, but can agree to do so (Wyo. Stat. § 16-6-110(a)).

Minors under 16 years of age may be limited on the number of hours they work, depending on whether the work is performed on school days (Wyo. Stat. §27-6-110-114).

Wyoming has no state law governing overtime for employees of private employers, except for employees on state and local public works projects (Wyo. Stat. § 16-6-110(a)). Any overtime obligations and exemptions would flow from the Fair Labor Standards Act.

26 | How should overtime be calculated?

Wyoming law does not address this topic for private sector employees, except for those employed on state and local public works projects, who must be paid time-and-a-half overtime for all hours worked over 40 in a week (Wyo. Stat. § 16-6-110(a)).

27 | What exemptions are there from overtime?

Any overtime exemptions flow from the Fair Labor Standards Act.

Record keeping

28 | What payroll and payment records must be maintained?

The following records must be kept by employers for two-years for each employee:

- employee's name, address, and occupation;
- amount paid each pay period;
- rate of pay; and
- hours worked each day and each working week (Wyo. Stat. §27-3-502; 27-4-203).

Wyoming employers must maintain unemployment compensation records for four years (Wyo. Dept. of Workforce Servs., Unemployment Ins. div., Records and Reports, Ch. 11, Sec. 1)

DISCRIMINATION, HARASSMENT AND FAMILY LEAVE

What is the state law in relation to:

Protected categories

29 | (a) Age?

The Wyoming Fair Employment Practices Act applies to employers with two or more employees. It makes it a discriminatory or unfair employment practice to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation, or the terms, conditions, or privileges of employment against any person otherwise qualified because of age (40 years or older) (Wyo. Stat. §27-9-105).

30 | (b) Race?

The Wyoming Fair Employment Practices Act applies to employers with two or more employees. It makes it a discriminatory or unfair employment practice to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation, or the terms, conditions, or privileges of employment against any person otherwise qualified because of race or color (Wyo. Stat. §27-9-105).

31 | (c) Disability?

The Wyoming Fair Employment Practices Act applies to employers with two or more employees. It makes it a discriminatory or unfair employment practice to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation, or the terms, conditions, or privileges of employment against a qualified disabled person (Wyo. Stat. §27-9-105). A "qualified disabled person" is defined as disabled persons who are capable of performing a particular job, or who would be capable of performing a particular job with reasonable accommodation to their disability.

32 | (d) Gender?

The Wyoming Fair Employment Practices Act applies to employers with two or more employees. It makes it a discriminatory or unfair employment practice to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation, or the terms, conditions, or privileges of employment against any person otherwise qualified because of gender (Wyo. Stat. §27-9-105).

33 | (e) Sexual orientation?

Wyoming does not treat sexual orientation or gender identity as a protected class.

Laramie has a local ordinance that prohibits employment discrimination on the basis of sexual orientation and gender identity for employers who do business with the city. The town of Jackson has adopted a similar ordinance which applies to all employers doing business within the town limits.

34 | (f) Religion?

The Wyoming Fair Employment Practices Act applies to employers with two or more employees. It makes it a discriminatory or unfair employment practice to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation, or the terms, conditions, or privileges of employment against any person otherwise qualified because of religion (Wyo. Stat. §27-9-105).

35 | (g) Medical?

Under Wyoming's Fair Employment Practices Act, which prohibits discrimination on the basis of disability, employers cannot take adverse action against an applicant or employee because of genetic information. "Genetic information" is defined as information about an individual's genetic tests, the genetic tests of their family members, or occurrences of disease or disorder among their family members (Wyo. Rules, Dept. of Workforce Servs., Labor Standards, Ch. 5, Sec.2(f)).

36 | (h) Other?

Additional protected classes under Wyoming law include color, national origin, ancestry, and pregnancy (Wyo. Stat. §27-9-105).

Under Wyoming's Fair Employment Practices Act, employers cannot require employees or prospective employees to refrain from using tobacco products off duty, or discriminate against an employee for use or non-use of tobacco products outside of their employment. An exception may apply if there is a bona fide occupational qualification that a person not use tobacco products outside the workplace (Wyo. Stat. §27-9-105).

Harassment

37 | What is the state law in relation to harassment?

No Wyoming law specifically addresses harassment in the workplace. However, the Wyoming Supreme Court has interpreted the state Fair Employment Practices Act as encompassing harassment claims (*Hoflund v. Airport Golf Club*, 2005 WY 17, 105 P.3d 1079 (Wyo. 2005)). In addition, harassment allegations may give rise to a claim for intentional infliction of emotional distress (*Kanzler v. Renner*, 937 P.2d 1337 (Wyo. 1997)).

Family and medical leave

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

Wyoming has no state family and medical leave law.

PRIVACY IN THE WORKPLACE

Privacy and monitoring

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

Wyoming law on privacy is not well developed. The Wyoming Supreme Court has ruled that an employee cannot sustain an invasion of privacy claim against the employer based on the employer's comments related to the manner and reasons for discharging the employee (*Jewell v. North Big Horn Hosp. Dist.*, 953 P.2d 135 (Wyo. 1998)).

Intercepting any oral, wire, or electronic communication is unlawful, except when the person intercepting is a party to the communication or when one of the parties has given prior consent (Wyo. Stat. §7-3-702(a)(i)).

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

There is no Wyoming law on the access or use of social media in the employment context.

Bring your own device

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

Wyoming law does not address the issue of bring your own device.

Off-duty

42 | To what extent can employers regulate off-duty conduct?

Under Wyoming's Fair Employment Practices Act, employers cannot require employees or prospective employees to refrain from using tobacco products off duty, or discriminate against an employee for use or non-use of tobacco products outside of employment. An exception may apply if there is a bona fide occupational qualification that a person not use tobacco products outside the workplace (Wyo. Stat. §27-9-105).

Gun rights

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

Wyoming law does not address guns or weapons in the workplace except through statutes which generally prohibit the possession of firearms in public buildings.

TRADE SECRETS AND RESTRICTIVE COVENANTS

Intellectual property

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

In the absence of an agreement or policy specifying ownership of inventions, Wyoming follows the general rule that if an employee's job duties include the responsibility for inventing, or solving a particular problem that requires invention, any invention created by that employee during the performance of these responsibilities belongs to the employer. An employee who is not hired to invent is the owner of any invention discovered during employment (*Preston v. Marathon Oil Co.*, 2012 WY 66, 277 P.3d 81 (Wyo. 2012)).

Restrictive covenants

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

Wyoming has no general statute or regulation governing non-compete agreements or other restrictive covenants. The Wyoming courts impose a high burden on employers seeking to protect their trade secrets and confidential information through restrictive covenants. To enforce a non-compete agreement, the employer must show:

- the contract is fair;
- the covenants are reasonable as to duration and geographic scope; and
-

it is necessary to protect a legitimate business interest of the employer (*CBM Geosolutions, Inc. v. Gas Sensing Technology Corp.*, 2009 WY 113, 215 P.3d 1054 (Wyo. 2009)).

A Wyoming employer must prove all terms of a noncompete agreement are reasonable; Wyoming courts can no longer blue pencil (redraft) a noncompete agreement to make it reasonable. *Hassler v. Circle C Res.*, 2022 WY 8, 505 P.3d 169 (Wyo. 2022).

Wyoming has adopted the Uniform Trade Secrets Act (Wyo. Stat. §40-24-101 et seq.).

Non-compete

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

Wyoming prohibits any agreement that restricts a lawyer from practicing after termination of an employment, partnership, or shareholder relationship (Wy. R. of Prof'l Conduct 5.6).

LABOR RELATIONS

Right to work

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

Yes, Wyoming is a “right to work” state.

Unions and layoffs

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

According to the Bureau of Labor Statistics, 7 per cent of Wyoming’s workforce is unionized. These positions are primarily in the mining, refining and pipeline industries.

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

Wyoming has no law regarding plant closures or mass layoffs for private employers.

DISCIPLINE AND TERMINATION

State procedures

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

Wyoming has no law governing private employers with regard to discipline and grievance procedures.

At-will or notice

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

Wyoming is an at-will state, so all employees who are employed for an indefinite period are presumed to be employees at will.

52 | What restrictions apply to the above?

The at-will status may be modified by an express or implied contract. Employee handbooks, personnel policies, letters of employment, performance evaluations, and a course of dealing may modify the at-will relationship or otherwise create contractual liability for an employer (*Trabing v. Kinko's, Inc.*, 2002 WY 171, 57 P3d. 1248 (Wyo. 2002)). An employer's right to discharge an employee at will is also limited by a limited public policy exception, prohibiting terminations in retaliation for exercising rights under the Wyoming Workers' Compensation Act (*Griess v. Consol. Freightways Corp.*, 776 P.2d 752 (Wyo. 1989)).

In addition, Wyoming law prohibits the termination of an employee without cause within one year of returning from a military leave of absence (Wyo. Stat. §19-11-104).

Final paychecks

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

An employee who is voluntarily or involuntarily terminated from employment must be paid all wages due no later than the employer's usual practice on regularly scheduled payroll dates (Wyo. Stat. §27-4-104). On a temporary layoff or suspension of work due to a labor dispute, affected employees must be paid all wages due on the next regular payday (Wyo. Stat. §27-4-101(d)).



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