SOUTH CAROLINA
ASSOCIATION OF COUNTIES

# Employment Law: What Counties Should Know

October 15, 2025
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*South Carolina's Labor & Employment Law Firm*

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## Topics


- County employees
- Employment at will
- Discrimination and Harassment
- Remote Work
- Public Records
- First Amendment and Public Employees
- Employee Handbooks
- South Carolina Payment of Wages Act

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# Topics


- Grievance Procedures
- Pregnancy and Lactation protections
- The Fair Labor Standards Act
- Drug Testing
- The Family and Medical Leave Act
- Military Leave
- E-Verify
- Political Activity

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# Who are County employees?

- The real issue is who **<u>aren't</u>** County employees

- Elected and appointed officials have hiring and firing authority for employees in their departments. The officials do not have to follow County policy with respect to discipline, hiring, and firing.

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## Who are County employees?

- *But*
- The County sets and controls the financial terms of employment
  - Compensation
  - FMLA leave
  - Benefits
- Elected and appointed officials must comply with state and federal law
  - And federal law generally trumps state law

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## Who are County employees?


- Try to get the elected and appointed officials to cooperate with and coordinate with your HR department
- Advise officials that if they refuse to coordinate with the County, and their refusal results in financial liability to the County, the costs and attorneys' fees may come out of the official's budget

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## At Will Employment

- True or False:
  - South Carolina is an “at will” state
    - True. 49 states, including South Carolina, are “at will” states.

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## At Will Employment

- At Will Employment means, essentially, that either the employer or the employee may end the employment relationship without giving either notice or reason.
- What employees aren’t at will?
  - Employees who have a contract of employment for a definite period of time
  - Employees who cannot be terminated without cause

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# At Will Employment

- True of False:
  - When employees are “at will” it means that they can be terminated for any reason.
    - False. An at will employee may be terminated for any reason or no reason, BUT NOT AN ILLEGAL REASON

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# Potentially Illegal Reasons

- Motivated by discriminatory intent based on a protected category
- Participating in a workplace investigation
- Reporting for jury duty
- Making an OSHA (Occupational Safety and Health Administration) complaint
- Refusing to perform illegal activities
- Requesting reasonable accommodation for a disability
- Taking legally protected leave (Family Medical Leave Act)
- Being a whistleblower regarding unsafe or illegal activity at the place of employment
- Filing a discrimination, wage, or harassment suit
- Complaining about wages, overtime, or the working environment

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## Federal Anti-Discrimination Laws

- Title VII of Civil Rights Act of 1964
  - Race
  - Sex (including sexual orientation, gender identity and pregnancy)
  - Religion
  - Color
  - National origin

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## Federal Anti-Discrimination Laws

- Age Discrimination in Employment Act (ADEA)
  - ≥40 years
- Americans With Disabilities Act (ADA)
  - Reasonable accommodation
  - Interactive process
- Genetic Information (GINA)
- Pregnant Workers Fairness Act (PWFA)

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## Title VII of Civil Rights Act of 1964

- Title VII prohibits discrimination against a job seeker or employee on the basis of race, color, religion, sex (including pregnancy, sexual orientation, and transgender status) or national origin.


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## Title VII of Civil Rights Act of 1964

- Title VII covers the full spectrum of employment decisions, including:
  - recruitment
  - selection
  - termination
  - promotion
  - discipline
  - other decisions concerning terms and conditions of employment.

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## The Age Discrimination in Employment Act

- Age discrimination involves treating an applicant or employee less favorably because of his or her age.
- The ADEA forbids age discrimination against people who are age 40 or older. It does not protect workers under the age of 40.
- It is not illegal for an employer to favor an older worker over a younger one, even if both workers are age 40 or older.

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## The Age Discrimination in Employment Act

- The ADEA prohibits discrimination in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, benefits, and any other term or condition of employment.
- It is unlawful to harass a person because of his or her age or retaliate against someone who reports age discrimination.
- Discrimination can occur when the victim and the person who inflicted the discrimination are both over 40.

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## The Americans With Disabilities Act

- The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability.
- The ADA prohibits an employer from retaliating against an applicant or employee for asserting his rights under the ADA.
- The ADA also makes it unlawful to discriminate against an applicant or employee, whether disabled or not, because of the individual's family, business, social or other relationship or association with an individual with a disability.

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## The Americans With Disabilities Act

- Under the ADA, a person has a disability if he has a physical or mental impairment that substantially limits a major life activity.
- The ADA also protects individuals who have a record of a substantially limiting impairment, and people who are regarded as having a substantially limiting impairment.
- An individual with a disability must be qualified to perform the essential functions of the job with or without reasonable accommodation, to be protected by the ADA.

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# The Americans With Disabilities Act

- A reasonable accommodation is any change or adjustment to a job or work environment that permits an employee with a disability to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.


- Reasonable accommodations may include:
  - acquiring or modifying equipment or devices,
  - job restructuring,
  - part-time or modified work schedules,
  - reassignment to a vacant position,
  - adjusting or modifying examinations, training materials or policies,
  - providing readers and interpreters, and
  - making the workplace readily accessible to and usable by people with disabilities.

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# The Americans With Disabilities Act

- It is a violation of the ADA to fail to provide reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability, unless to do so would impose an undue hardship on the operation of your business.

- Undue hardship means that the accommodation would require significant difficulty or expense in relation to the size and resources of the employer.


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## Harassment

- What is unlawful harassment?
  1. Verbal, nonverbal or physical conduct
  2. That denigrates, belittles, or puts down an individual or shows hostility, distaste, or aversion toward an individual based on his or her:

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## Harassment (cont.)

- race
- color
- religion
- sex (including sexual orientation, gender identity and pregnancy)
- national origin
- age (40 or older)
- disability

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# Let's play: Is it UNLAWFUL harassment?!!!!!


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# Question # 1

I'm a huge Gamecock fan. My coworker's office looks like this:


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# Question # 2

I'm of Pakistani origin, and every time I see my coworker he says:


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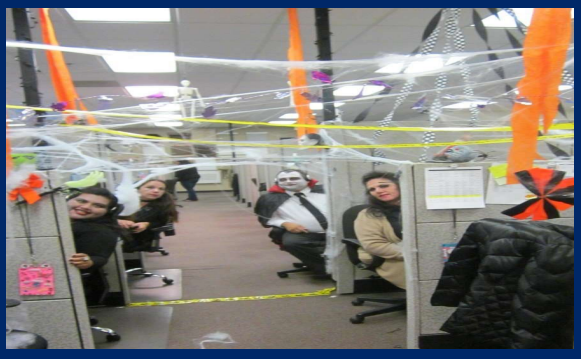
# Question #3

I don't celebrate Halloween for religious reasons, because I think it promotes paganism and devil-worship. Here is what I see when I walk into work all of October:



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# Question # 4

My boss constantly makes fun of lazy millennial “snowflakes” who get offended by everything, are addicted to their phones, and think the world owes them something. This is my friends and I:

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# The most common form of harassment

- What is the most common and well-known type of harassment?
  - Sexual harassment

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# Sexual Harassment

- Sexual harassment is a form of discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:
  - Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, career; or
  - Submission to or rejection of such conduct is used as a basis for career or employment decision; or
  - Such conduct has the purpose or effect of interfering with an individual's work performance, or creates an intimidating, hostile or offensive work environment.

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# Retaliation

- Harassment because of opposition to unlawful conduct is also illegal.
- Harassment because of participation in an investigation into unlawful conduct is also illegal.


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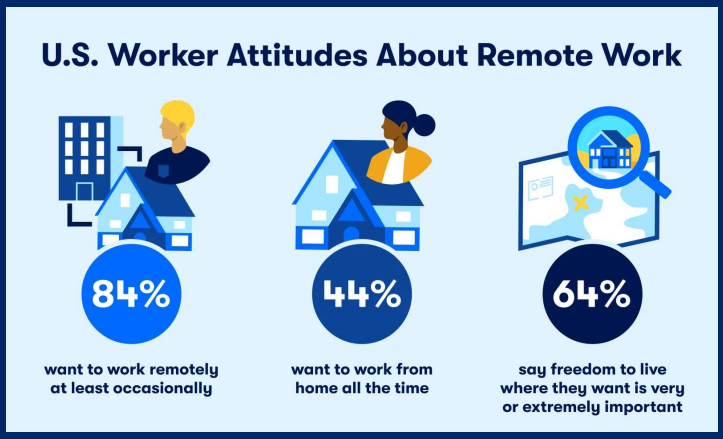
# Remote Work

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# Remote Work

Things to bear in mind if your County is still permitting remote work:

- Communication and Collaboration – avoid “out of sight, out of mind”
- Performance Management – supervisors must continue to supervise
- Set Clear Expectations – benchmarks and goals with follow-up
- Policies – have them in place and apply them evenly

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# Remote Work

- Employers should not automatically deny a remote work request
- In some cases, remote work may be a reasonable accommodation to disability
- Permitting an employee to work at home may be a reasonable accommodation, even if the County has no telework program

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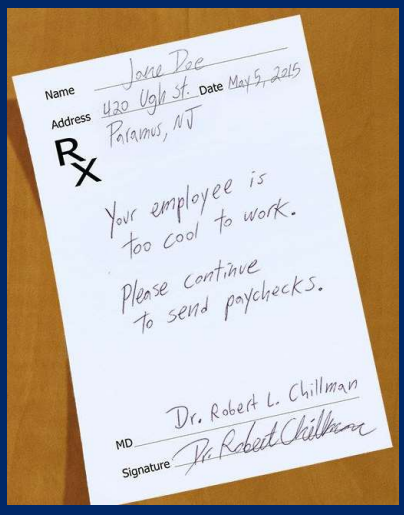
# Remote Work

- However, a doctor cannot "prescribe" remote work
- An accommodation should be reached through an interactive process between the employee and employer
- An employer is not obligated to adopt an employee's preferred or requested accommodation and may instead offer alternate accommodations as long as they would be effective

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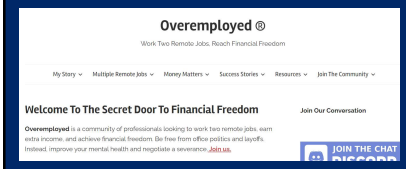
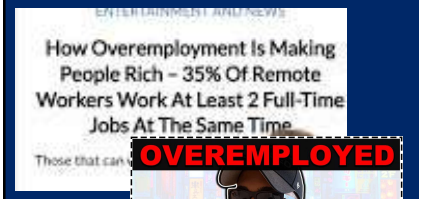
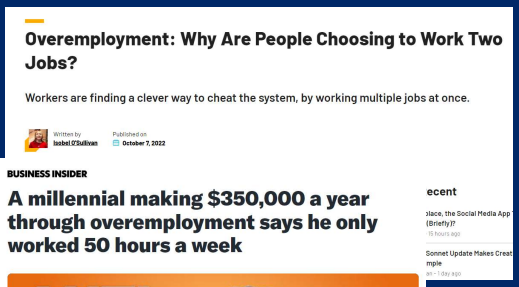
# Remote Work

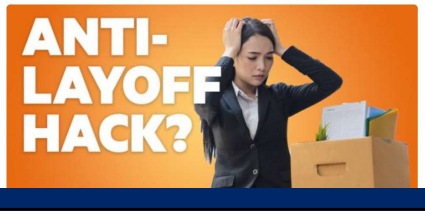
When employers fail to follow proper remote work guidelines, they could end up being taken advantage of.





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# Public Records

- Public Records - all books, papers, maps, photographs, cards, tapes, recording, or other materials regardless of physical form (including emails and phone records for work cell phones and other work equipment)
- A person who unlawfully removes a public record from the office where it usually is kept or alters, defaces, mutilates, secretes, or destroys it is guilty of a misdemeanor and may be fined or imprisoned (SC Code § 30-1-30)
- The Archives and Records Management Division of the State Archives has prepared general retention and disposition schedules for counties
- The schedules list permanently valuable records, which should be properly protected for future use, and they also supply a timetable that will allow records custodians to regularly and legally dispose of records of non-permanent value
- The County-specific retention schedule can be found here: https://scdah.sc.gov/records-management/schedules

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# Public Records

- The South Carolina Freedom of Information Act (SC Code § 30-4-10 et seq.) requires that public records and information must be made available to the public at a minimum cost or delay.
- SC Code Section 30-4-40(a) states that a "public body may but is not required to exempt" certain information from disclosure.
- For personnel files, the exception is personal information where disclosure would be an "unreasonable invasion of personal privacy."
- The courts have narrowly construed this exception while weighing the public's interest against personal privacy.
- Whether a County should produce personnel records in response to a FOIA request will require an individual analysis.

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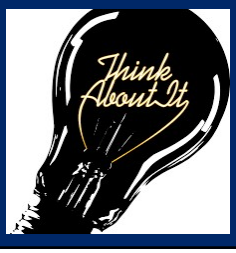
# Public Records

- What about work emails sent on a personal computer or work-related texts sent on a personal phone, do those constitute "public records"?
- *See* Does Using Personal Devices Foil FOIA? from the SC Press Association for a full discussion (https://scpress.org/does-using-personal-devices-foil-foia/)
- The safest answer until a South Carolina court weighs in is "potentially".
- Therefore, if those texts and emails are potentially FOIA-able, should your County consider prohibiting employees from using personal devices for work-related purposes?

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# The First Amendment and Public Employees

MONEYWATCH

**Workers fired, placed on leave for Charlie Kirk comments after assassination**

WORKFORCE

**Public Workers Are Getting Fired for Posting About Charlie Kirk**

GOP leaders urged citizens to flag social media posts about Kirk, leading to investigations and dismissals across state and local agencies.


**Educators fired after posting about Charlie Kirk allege in lawsuits that their free speech rights were violated**

The posts were shared on their private social media accounts.

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# The First Amendment and Public Employees

- The First Amendment prohibits governmental entities from "abridging the freedom of speech."
- That means that a County cannot arrest, fine <u>or even discipline or fire</u> someone because they exercised their right to First Amendment protected free speech.



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# The First Amendment and Public Employees

- But not all speech is protected by the First Amendment.
- Speech not protected by the First Amendment includes:
  - obscenity
  - fighting words
  - defamation
  - child pornography
  - perjury
  - blackmail
  - threats of violence
  - incitement to imminent lawless action
  - solicitations to commit crimes
  - statements made pursuant to an employee's official job duties
  - plagiarism of copyrighted material


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# The First Amendment and Public Employees

- "[P]ublic employees do not surrender all their First Amendment rights by reason of their employment . . . Rather, the First Amendment protects a public employee's right, in certain circumstances, to speak as a citizen addressing matters of public concern." Garcetti v. Ceballos, 547 U.S. 410, 417 (2006).
- "[T]he law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out . . ." BUT "in recognition of the government's interest in running an effective workplace, the protection that public employees enjoy against speech-based reprisals is qualified." Mercado-Berrios v. Cancel-Alegría, 611 F.3d 18, 25 (1st Cir. 2010).
- "When a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom." McGunigle v. City of Quincy, 944 F.Supp.2d 113 (1st Cir. 2016).

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# The First Amendment and Public Employees

- When analyzing whether employee speech is protected by the First Amendment, a public employer must ask whether a public employee spoke on a matter of public concern, defined as a matter of larger societal significance or importance.
- 
- If a public employee was disciplined or discharged for expressing a private grievance, that would not violate the First Amendment.
- If, however, a public employee spoke on a matter of public concern, the County must engage in a balancing test.
- The County should balance the employee's right to free speech against the County's interests in an efficient, disruptive-free workplace.


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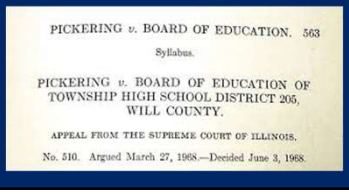
# The First Amendment and Public Employees

- The United States Supreme Court developed this test in Pickering v. Board of Education (1968), a case involving a public high school teacher who was terminated after writing a letter to the editor of a newspaper that was highly critical of school district officials but not people he worked with on a day-to-day-basis.
- The Supreme Court reasoned that Pickering spoke on a matter of public concern – whether the school district spent too much money on athletics as opposed to academics.
- The Court then held that Pickering's rights to free speech outweighed the school board's interests in a disruptive free workplace, largely because Pickering did not criticize people that he worked with daily, such as fellow teachers or his principal.



PICKERING v. BOARD OF EDUCATION. 563

Syllabus.

PICKERING v. BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205, WILL COUNTY.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

No. 510. Argued March 27, 1968.—Decided June 3, 1968.

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## The First Amendment and Public Employees

- If your County is considering disciplining or discharging an employee based on their speech, the questions to ask are:
  - (1) whether the speech falls into one of the categories not protected by the First Amendment listed above;
  - (2) whether the speech is on a matter of public concern rather than a private grievance; and
  - (3) whether the speech was so disruptive that the County's interest in maintaining an efficient and harmonious workplace outweighs the employee's right to free speech.

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## Employee Handbooks


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# Employee Handbooks

## Why do we need one?


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## Employee Handbooks

- What should be on the first page?
  - A disclaimer
- What one word must describe the disclaimer?
  - Conspicuous
- Why does the disclaimer need to be conspicuous?
  - Prevents the handbook from being a contract

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## Employee Handbooks

- Disclaimer (Handbooks are not contracts) § 41-1-110
  - Page 1 of handbook, employee manual
  - ALL CAPITAL LETTERS AND UNDERLINED
  - Signed by employee
  - Date effective

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**DISCLAIMER**

ALL EMPLOYEES OF THE COUNTY ARE EMPLOYED AT-WILL AND MAY QUIT OR BE TERMINATED AT ANY TIME AND FOR ANY OR NO REASON. NOTHING IN ANY OF THE COUNTY'S RULES, POLICIES, HANDBOOKS, PROCEDURES OR OTHER DOCUMENTS RELATING TO EMPLOYMENT CREATES ANY EXPRESS OR IMPLIED CONTRACT OF EMPLOYMENT. THIS HANDBOOK REPLACES ANY PREVIOUSLY ISSUED POLICIES, PRACTICES AND UNDER-STANDINGS, WRITTEN OR ORAL, GOVERNING EMPLOYMENT. NOTHING CONTRARY TO OR INCONSISTENT WITH THE LIMITATIONS IN THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT UNLESS: 1) THE TERMS ARE IN WRITING; 2) THE DOCUMENT IS LABELED "CONTRACT"; 3) THE DOCUMENT STATES THE TERM OF EMPLOYMENT; AND 4) THE DOCUMENT IS SIGNED BY THE COUNTY [ADMINISTRATOR/MANAGER/MAYOR] OR APPROVED BY VOTE OF COUNCIL.

ACKNOWLEDGEMENT:

_____

[Signature] Date

_____

Printed Name

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# Employee Handbooks

- Must have policies:


  - Equal Employment Opportunity
  - Anti-harassment
    - Must prohibit all harassment
    - Must prohibit retaliation
    - Must have a procedure for reporting, including alternate reporting based on different potential harassers
  - Family and Medical Leave Act

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# Employee Handbooks

- Policies to consider:
  - Reasonable Accommodations
  - Social Media
  - Artificial Intelligence
  - Holidays
  - County Equipment – “advance on wages”; ethics issues
  - Drug-Free Workplace policy

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## Is your County’s employee handbook an ordinance?

- Here are just a few of the things that have happened that may have made your County’s handbook out-of-date just in the past two years:
  - Constitutional Carry (effective March 7, 2024)
  - The Pregnant Workers Fairness Act (effective June 27, 2023, but final regulations went into effect on June 18, 2024)
  - South Carolina’s Hands-Free Driving Act (effective September 1, 2025)
- If your County’s employee handbook is searchable, search for the word “Myspace”
- Both law and everyday life change rapidly. Consider whether having an employee handbook that can only be modified by ordinance makes sense in our constantly evolving world

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## The South Carolina Payment of Wages Act


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## The South Carolina Payment of Wages Act

- Payment of Wages Act -- § 41-10-10 et seq.
  - Notice of hours, wages, deductions, and place of payment
  - Pay according to notice
  - 7 days written notice of changes

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## The South Carolina Payment of Wages Act

- Why is it important not to violate?
  - Damages include:
    - Treble damages
    - Costs and attorney's fees
  - Likely not covered by insurance

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## Grievances

- Grievance Procedure Act
  - Not required to have grievance procedure but if you do, it must comply with the Act
  - But which Act?

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## Grievances

- Title 8, Chapter 17, Article 3
  - Not Article 5!
- Proper subjects for a grievance hearing:
  - dismissal, suspensions, involuntary transfers, promotions and demotions
  - Not compensation, except where alleged to be inequitable

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## Grievances

- A sheriff's deputy has been suspended and requests a grievance hearing. What do you tell them?


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# Grievances

- Points to remember:
  - Have a grievance committee in place before you need one;
  - Employee is not entitled to representation during the hearing unless your policy so provides;
  - The committee only makes a recommendation

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# Recent Pregnancy Protections


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## (not so) Recent Pregnancy Protections

- The Pregnancy Discrimination Act of 1978, amended Title VII of the Civil Rights Act of 1964 to prohibit discrimination on the basis of pregnancy, childbirth, or related medical conditions.
- Effective March 23, 2010, the Patient Protection and Affordable Care Act amended the FLSA to require employers to provide a nursing mother reasonable break time to express breast milk after the birth of her child.
  - The amendment also requires that employers provide a place for an employee to express breast milk.

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## Recent Pregnancy Protections

The South Carolina Pregnancy Accommodations Act

§ 1-13-10 to -110. Enacted on May 2018.

- extends discrimination protections and reasonable accommodations to "women affected by pregnancy, childbirth, or related medical conditions."

- covered employers must provide written notice of the right to be free from discrimination for medical needs arising from pregnancy, childbirth, or related medical conditions.

- this notice must be given to all new employees at the commencement of employment and should have been given to all existing employees as of September 14, 2018.

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# Recent Pregnancy Protections

- The South Carolina Lactation Support Act
  § 41-1-130. Effective June 25, 2020.
  - provide a room or other location (other than a toilet stall) for an employee to express milk
  - does not require an employer to provide break time if doing so would create an undue hardship
  - makes it unlawful for an employer to discriminate against an employee for choosing to express breast milk in the workplace

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# Recent Pregnancy Protections

- The federal government has recently passed laws similar to the two South Carolina laws just discussed:
- The Pregnant Workers Fairness Act (PWFA)
  - effective June 27, 2023.


- The PUMP for Nursing Mothers Act ("PUMP") Act
  - effective April 28, 2023.

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# Recent Pregnancy Protections

What are Some Accommodations for Pregnant Workers?

- Being able to sit or drink water
- Taking leave or time off to recover
- Receiving appropriately sized uniforms and safety apparel
- Receiving break time to use the bathroom, eat, and rest
- Being excused from strenuous activities

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# The FLSA

- The Fair Labor Standards Act, or FLSA, was signed into law on June 25, 1938.
- According to a U.S. Department of Labor (DOL) fact sheet, the FLSA protects more than 143 million American workers.


The four main provisions of the FLSA are:

- Federal minimum wages
- Overtime pay
- Employer recordkeeping
- Child labor

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## The FLSA

- Covered, nonexempt workers are entitled to a minimum wage of $7.25 per hour effective July 24, 2009.
- Nonexempt workers must be paid overtime pay at a rate of not less than one and one-half times their regular rates of pay after 40 hours of work in a workweek.
- Every covered employer must keep records for each non-exempt worker that include identifying information about the employee and data about hours worked and wages earned.

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## EAP Exemption to the FLSA

- Employees are exempt from the Fair Labor Standards Act's minimum wage and overtime protections if they are employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in the Department's regulations at 29 CFR part 541.
- To fall within the EAP exemption, an employee must:
  - be paid a salary;
  - be paid at least a specified weekly salary level; and
  - primarily perform executive, administrative, or professional duties, as provided in the Department's regulations.

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# Drug Testing

- Your County's employee handbook should have a drug-free workplace policy
- Drivers with Commercial Driver's Licenses should have their own separate policy because DOT rules only apply to CDL drivers
- Only employees in "safety sensitive positions" may be randomly drug-tested
- All employees may be tested based on "reasonable suspicion" or post-accident
- Disciplinary consequences for positive tests should be consistent


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# The Family and Medical Leave Act

- Family and Medical Leave Act (FMLA)
  - Employee must have worked at least one year and 1250+ hours in the preceding twelve months
  - Employee receives 12 workweeks of leave in a rolling twelve-month period
  - Provisions for military purposes
    - Eligible employees may take FMLA leave for specified reasons related to certain military deployments of their family members.
    - 26 weeks of FMLA leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.

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## The Family and Medical Leave Act

- A covered employer must grant an eligible employee up to a total of 12 workweeks of unpaid, job-protected leave in a 12-month period for one or more of the following reasons:
  - for the birth of a son or daughter, and to bond with the newborn child;
  - for the placement with the employee of a child for adoption or foster care, and to bond with that child;
  - to care for an immediate family member (spouse, child, or parent – but not a parent "in-law") with a serious health condition;
  - to take medical leave when the employee is unable to work because of a serious health condition; or
  - for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or call to covered active duty status as a member of the National Guard, Reserves, or Regular Armed Forces.
- The FMLA also allows eligible employees to take up to 26 workweeks of unpaid, job-protected leave in a "single 12-month period" to care for a covered servicemember with a serious injury or illness.

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## Analyzing an Employee's Request for Leave Following an on-the-job injury

- Laws that may apply:
  - The Family and Medical Leave Act
    - Does the employee have a serious health condition?
    - Has the employee worked for at least one year?
    - Has the employee been absent for more than twelve weeks?
  - The Americans with Disabilities Act
    - Could the employee's injury classify as a disability?
    - Is the employee's need for leave for a definite amount of time?
    - Is the employee's need for leave less than six months total?
  - Worker's Compensation Retaliation
    - Is any decision based on the filing of a worker's compensation claim or participating in a proceeding?
    - Does a statutory affirmative defense apply?

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## Worker's Compensation Retaliation

- Workers' Compensation Anti-Retaliation §41-1-80
  - Defenses to a claim of worker's compensation retaliation:
    - willful or habitual tardiness or absence from work;
    - being disorderly or intoxicated while at work;
    - destruction of any of the employer's property;
    - failure to meet established employer work standards;
    - malingering;
    - embezzlement or larceny of the employer's property;
    - violating specific written company policy for which the action is a stated remedy of the violation.

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## The Uniformed Services Employment and Reemployment Rights Act

- USERRA is a federal law that protects military service members and veterans from employment discrimination on the basis of their service and allows them to regain their civilian jobs following a period of uniformed service.
- USERRA applies to members of the Armed Forces, Reserves, National Guard, FEMA Reservists and other "Uniformed Services" (the National Disaster Medical System and the Commissioned Corps of the Public Health Service).

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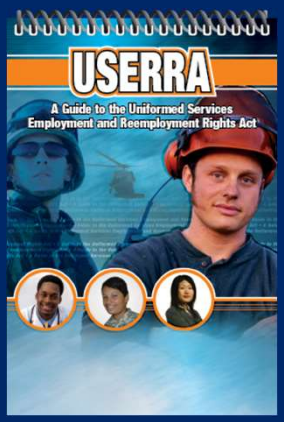
## The Uniformed Services Employment and Reemployment Rights Act

- USERRA ensures that service members:
  - Are not disadvantaged in their civilian careers because of their military service;
  - Are promptly re-employed in their civilian jobs upon return from duty;
  - Are not discriminated against by employers because of past, present, or future military service.

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## The Uniformed Services Employment and Reemployment Rights Act

- Employees must provide notice to employers that they will be absent due to military service. Employees should give notice to their employers as soon as they have received it. Employees should provide a copy of their orders where possible.
- Employees must leave civilian work for the purpose of military service; nothing else.
- Employees must serve honorably for USERRA to apply; any less-than-honorable discharge from service duties may affect employers' obligations to re-employ the worker under USERRA.

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## The Uniformed Services Employment and Reemployment Rights Act

- Employees may not be absent for more than five cumulative years from any one employer. This provision has some exceptions where calls for service do not count toward the five-year maximum.
- Employees must report back to work in a timely fashion, which depends on the length of service under USERRA. Generally, for service less than 31 days, the employee must return at the beginning of the next regularly scheduled work period. For service of 31 to 180 days, the employee must apply for reemployment within 14 days of release from service. And for service of 181 or more days, within 90 days of release from service.

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## State Law - Paid Military Leave

- Non-Temporary Employees with official military orders are eligible for paid military leave to engage in training or any other duties to which they are lawfully ordered.
- The 15 workdays of short-term military leave are based on regularly scheduled average workdays and are not required to be consecutive.
- The 15 days of short-term military leave cannot be used for travel time outside of the dates on the orders. An employee may request annual leave, compensatory time, or leave without pay for travel time to get to the assignment outside of the dates on the order.
- In accordance with S.C. Code Section 8-7-90, an employee who receives official military orders to serve during a declared emergency is entitled to 30 days of paid leave per declared emergency in addition to the 15 workdays of paid military leave granted each year.
- In accordance with S.C. Code Section 8-7-90, an employee who serves on active duty in a combat zone and who has exhausted all available leave for military purposes is entitled to receive up to 30 additional days of military leave in any one year.

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# E-Verify

- E-Verify is an Internet-based system that compares information entered by an employer from an employee's Form I-9 to confirm employment eligibility.
- Form I-9 has been the foundation of the employment eligibility verification process since 1986.
- Within three days after employing a new employee, employers must verify their eligibility to work in the United States by using the internet-based E-Verify system.
- This is in addition to – not a substitute for – completing the I-9 form.
- Employers are subject to audits by SC LLR to determine compliance.
- Non-compliance can lead to steep penalties, including probation, additional reporting requirements, and fines for each individual violation.

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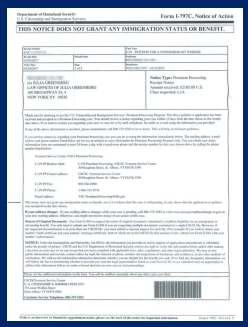
# E-Verify

- Examples of Form I-9 Acceptable Documents:





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# Political Activity

- SC Code § 16-17-560 and the First Amendment to the U.S. Constitution make it unlawful to discharge a citizen from employment because of his political opinions or the exercise of political rights.
- Employers can prohibit employees from campaigning during work time or at work sites.
- SC Code § 8-13-765 bars the use of government personnel or facilities for campaign purposes.
- Employers should be careful to avoid the appearance of an official endorsement or support of an employee/candidate.
- If an employee's pursuit of office creates a conflict of interest or causes a disruption in the workplace, the employee can be placed on leave of absence for the duration of the campaign. However, an employee cannot be terminated simply because he has chosen to run for office.

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# Questions?


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