

SOUTH DAKOTA LABOR AND EMPLOYMENT LAWS

WHAT YOU NEED TO KNOW

Q: 1 *What are the reasons for which an employer may terminate an employee?*

A: Employment relationships in South Dakota may be terminated at will, which basically means an employer does not need a specific reason for firing an employee. State law says “an employment having no specified term may be terminated at the will of either party on notice to the other, unless otherwise provided by statute.”

Generally, the exceptions to the at will statute are:

- When there is a contract for a certain length of employment
- When the employer discharges an employee in retaliation for his refusal to commit a criminal or unlawful act
- When the employee is attempting to take advantage of a lawful right such as filing a workers’ compensation claim

State law also provides some job protection for people who smoke. It is considered a discriminatory or unfair practice to fire an employee for any use of tobacco products off the worksite during nonworking hours. Exceptions may be made only if a non-smoking requirement is important to an individual or group of employees’ job activities, or if a smoking prohibition is necessary to avoid a conflict of interest with any responsibilities to the employer. The law specifically allows for a ban for full-time firefighters.

State and federal law also forbids the discharge of any employee (or refusal to hire) any person because of race, color, creed, religion, sex, ancestry, disability or national origin. In addition, an employee may not be terminated for service as juror in any court in the State of South Dakota.

This is not a complete list of exceptions to the termination at will doctrine and in no way may be considered legal advice. For further information, contact the Division of Labor and Management at 605.773.3682. For specific legal advice contact a private attorney.

Q: 2 *What does the state law require for rest/meal periods?*

A: South Dakota does not have a law that requires an employer to provide rest breaks or meal periods. This is a matter of employer policy. The Fair Labor Standards Act (federal) also does not require breaks.

Q: 3 *What is the state law on holiday pay?*

A: South Dakota does not have a law that requires holiday pay. This again, is employer policy. The Fair Labor Standards Act (federal) does not require holiday pay.

Q: 4 *What is the state law regarding paid leave, i.e. vacation and sick time?*

A: South Dakota has no law requiring paid leave. This is a matter of employer policy.

Q: 5 *When an employee voluntarily terminates employment, when is the final paycheck due?*

A: The law requires that all wages be paid on the next regular payday after an employee quits. The law does allow an employer to withhold the final paycheck until the employee returns any property that belongs to the employer.

Q: 6 *When an employer fires an employee, when is the final paycheck due?*

A: All wages and compensation earned are due on the next regular payday after the employee is terminated. The law does allow an employer to withhold the final paycheck until the employee returns any property that belongs to the employer.

- Q: 7** *If my employer fires me without giving me any notice, am I entitled to severance pay?*
A: There is no law that requires an employer to pay severance pay. This is a matter of agreement or contract between the employer and employee. If you feel you are entitled to severance pay, you may file a claim in small claims court in an attempt to collect the compensation.
- Q: 8** *If I terminate my employment without giving two weeks notice can my employer withhold my compensation or vacation pay?*
A: The employer may compensate you at a rate of not less than \$9.45 per hour for all hours worked (effective Jan. 1, 2021). Whether compensation for vacation pay is withheld for failure to give notice is a matter of agreement between employer and employee.
- Q: 9** *Does an employee called for jury duty have to be paid by their employer for the time missed from work?*
A: The law prohibits an employer from firing or demoting an employee for serving as a juror. Time missed for jury duty may be with or without pay at the employer's discretion.
- Q: 10** *Where do I find information on discrimination, harassment and maternity leave?*
A: For information regarding these matters along with employment interviews and polygraph and drug testing, please contact the Division of Human Rights at 605.773.3681.
- Q: 11** *Where do I find information on federal income tax, W-2 forms, W-4 forms?*
A: You should contact the Internal Revenue Service to obtain this information. The telephone number is 800. 829.1040. Web address is www.irs.gov.
- Q: 12** *Where do I find information relating to the Family Medical Leave Act, Fair Labor Standards Act, Davis-Bacon Act, and exempt vs. nonexempt employment?*
A: These are matters that are regulated by the U.S. Department of Labor. For more information, you should contact the Federal Wage and Hour Division. The telephone number is 720.264.3250.
- Q: 13** *If I leave my employer, whether through termination or voluntarily, what are my rights as they relate to continuing the medical insurance I receive through my employment?*
A: The provisions of the COBRA regulations are regulated and enforced by the Division of Technical Assistance. They can be contacted at 866.487.2365.

If you have any questions you may contact the Division of Labor and Management at 605.773.3682 or the U.S. Department of Labor/Wage and Hour Division at 866.487.2365.