

SOUTH DAKOTA — State Laws by Topic

➤ AGE ◀

No provisions specified in the general employment context for private employers.

➤ AIDS ◀

No provisions specified in the general employment context.

➤ ARRESTS/CONVICTIONS ◀

No general provision prohibiting an employer's collection and use of arrest or conviction records. South Dakota has adopted Guidelines on Employee Selection Procedures, similar to the federal Uniform Guidelines on Employee Selection Procedures. Consequently, inquiries into criminal records information may be invalidated if it is a discrete step in employment decisions and if it adversely affects members of a protected class, unless the employer can demonstrate that the inquiry is related to job performance.

➤ BREAKS ◀

No provision.

➤ BREAST-FEEDING ◀

No general provision.

➤ CHILD LABOR ◀

Click on the following link https://dlr.sd.gov/employment_laws/youth_employment.aspx to access South Dakota's Department of Labor, Wage and Hour Division youth employment home page.

➤ CHILD SUPPORT ◀

Employers served with a child support order must begin withholding with the next scheduled payday after the order is served. Amounts are remitted within seven days of payday. Notify the court or the agency within five days if the employee-obligor terminates. With employers' consent, the state may serve child support withholding orders electronically.

➤ COURT ATTENDANCE ◀

See jury duty.

➤ **DISABILITIES** ◀

Under the South Dakota Human Relations Act, employers with one or more employees are prohibited from discriminating against an individual based on disability.

➤ **DRUG TESTING** ◀

No statutory provisions for private employers.

➤ **FAMILIAL/MARITAL STATUS** ◀

No provisions specified in the general employment context.

➤ **FAMILY/MEDICAL LEAVE** ◀

Coverage: State employers.

Length of leave: 40 hours annually of accumulated sick leave is the maximum leave permitted.

Reasons for leave: Leave may be taken for illness or death of an immediate family member.

See also military leave.

➤ **GENETIC TESTING** ◀

Employers are prohibited from obtaining, seeking, or using genetic information. No genetic testing may be conducted without the informed consent of the person to be tested.

➤ **HEALTH CARE CONTINUATION COVERAGE** ◀

Continuation coverage requirements apply to employers with fewer than 20 employees. Eligible employees have the right to continue coverage for up to 36 months.

Any insurer providing continuation coverage must offer beneficiaries the option to decrease benefits of the continued coverage.

Click on the following link <https://dlr.sd.gov/insurance/cobra.aspx> to access the Division of Insurances' home page.

➤ **JURY DUTY** ◀

Employees may not be suspended or discharged because they perform jury service. Employees are entitled to the same job, pay, and status held before they performed jury service. Jury leave may or may not be paid, at an employer's discretion.

➤ **LIFESTYLE DISCRIMINATION** ◀

Employers cannot terminate an employee due to the employee's use of tobacco products off the company's premises during non-working hours, unless a *bona fide* occupational qualification exists.

It is not a violation for an employer to offer, impose, or have in effect a health or life insurance policy that makes distinctions among employees for type or cost of coverage based on an employee's use of tobacco products.

➤ **MASS LAYOFF NOTIFICATION** ◀

No state-specific notification provision.

➤ **MEDICAL DONATION LEAVE** ◀

No general provision.

➤ **MILITARY LEAVE** ◀

Members of the reserves of the U.S. Armed Forces, the South Dakota National Guard, or the National Guard of any other state, who are called to military training are entitled to a leave of absence, from non-temporary positions, not to exceed 15 days in a calendar year.

Reinstatement: Members of the reserves or National Guard who take military leave to perform active duty or military training are entitled to reinstatement if they: 1) give notice to their employer of the date of departure and a reasonable estimation of the date of return; 2) provide evidence of satisfactory completion of service; and 3) are qualified to perform the job duties. They must be restored to the same or a similar position with the same status, pay, and seniority.

Family military leave: Provisions apply to state employers only.

➤ **MINIMUM WAGE** ◀

Minimum hourly wage/overtime rate: \$9.10/\$13.65.

Basis for overtime: Over 40 hours/week.

Opportunity wage for under 20-year-olds: \$4.25.

Note: The state bases its minimum wage on the federal minimum wage. The state minimum may exceed federal minimum wage by a stated amount or percentage, or be adjusted to reflect cost of living increases.

➤ **NATIONAL ORIGIN** ◀

Under the South Dakota Human Relations Act, employers with one or more employees are prohibited from discriminating against an individual based on national origin or ancestry.

➤ **NEW-HIRE REPORTING** ◀

Data to be reported: Employee's name, address, SSN, first day of work; employer's name, address, federal EIN.

Reporting deadline/form: Within 20 days of hire or rehire, including employees who are reinstated after 30 consecutive days off the payroll; on W-4s or through the state's website.

➤ **OVERTIME** ◀

Basis for overtime: Over 40 hours in a workweek.

➤ **PAY STATEMENTS** ◀

Information required: No provision.

➤ **PERSONNEL FILES** ◀

Public employers only. Employment examinations and performance appraisals are excluded from records that are otherwise subject to inspection by the public.

➤ **POLYGRAPH TESTING** ◀

No provisions specified in the general employment context.

➤ **POSTING REQUIREMENTS** ◀

Workplace Safety — All employers

Sexual Harassment — All employers

Unemployment Benefits Notice — All employers

➤ **PREGNANCY** ◀

General rule: Prohibited discrimination based on sex includes discrimination based on pregnancy. Written and unwritten policies and practices, except for insurance, shall be applied to pregnancy and childbirth on the same terms and conditions as they are applied to other temporary disabilities.

➤ **RACE** ◀

Under the South Dakota Human Relations Act, employers with one or more employees are prohibited from discriminating against an individual based on race or color.

➤ **REFERENCES** ◀

References: Employers are immune from liability if they disclose information about a current/former employee's job performance to a prospective employer. The disclosure must be: 1) in writing; 2) in response to a written request from the employee or prospective employer; and 3) made available to the employee on written request.

Immunity is lost by recklessly, knowingly, or maliciously disclosing false or deliberately misleading information, or disclosing information that is made confidential by a non-disclosure agreement or any law.

➤ **RELIGION** ◀

Under the South Dakota Human Relations Act, employers with one or more employees are prohibited from discriminating against an individual based on creed or religion.

➤ **REPORTING PAY** ◀

No provision.

➤ **SAFETY** ◀

No OSHA-monitored state plan. For general information, click on www.osha.gov/.

➤ **SCHOOL VISITATION LEAVE** ◀

No provision.

➤ **SEX DISCRIMINATION** ◀

Under the South Dakota Human Relations Act, employers with one or more employees are prohibited from discriminating against an individual based on sex.

➤ **SEXUAL HARASSMENT** ◀

State employers must provide employees a work environment free from sexual harassment.

➤ **SEXUAL ORIENTATION DISCRIMINATION** ◀

No provision.

➤ **SMOKING** ◀

No person may smoke tobacco or carry any lighted tobacco product in any enclosed public place or place of employment, with limited exceptions.

See also lifestyle discrimination.

➤ **SOCIAL SECURITY NUMBER PRIVACY** ◀

Employers must notify employees of breaches to their security systems if employees' unencrypted personal or protected information has been stolen or encrypted information has been stolen, along with the security key, within 60 days of the occurrence. Notification isn't necessary if employers determine, after an appropriate investigation and notice to the attorney general, that the breach will not likely result in harm to employees. Employers already covered by federal law (i.e., HIPAA or the Gramm Leach Bliley Act) are considered to be complying with this state law.

Personal or protected information includes employees' first and last names in connection with any of the following data elements:

- Social Security numbers;
- driver's license numbers;
- account, credit card or debit card numbers, in combination with any required security codes, access codes, passwords, routing numbers, PINs or any additional information that would permit access to a financial account;
- health information; and
- identification numbers assigned to employees in combination with required security codes, access codes, passwords or biometric data generated for authentication purposes.

Protected information includes user names or email addresses used in combination with passwords, security questions or other information that permits access to online accounts and account numbers or credit or debit card numbers in combination with security code, excess codes or passwords that permit access to financial accounts.

Employers may notify employees in writing or electronically. Employers must also notify credit reporting agencies.

➤ **UNEMPLOYMENT INSURANCE** ◀

Click on the following link <https://dlr.sd.gov/ra/businesses/default.aspx> to access the South Dakota Department of Labor unemployment insurance benefits home page for employers.

➤ **VACATION PAY UPON TERMINATION** ◀

No provision requires private employers to pay accrued vacation at the time of termination. However, state employees must take earned vacation leave in a lump sum when they leave state employment for any reason, including termination for cause.

➤ **VIOLENCE** ◀

No general workplace violence provision.

➤ **VOTING** ◀

If employees don't have a period of two consecutive hours away from work during the time the polls are open on Election Day, then they are entitled to be absent from work up to two hours between the time the polls open and when they close. Employers don't have to give workers time off to vote, if they have two consecutive hours that they are not working during the time the polls are open. Employers may specify when workers may be absent to vote.

Wages: No deduction may be made from employees' usual salary or wages for time taken off to vote.

➤ **WAGE DEDUCTIONS** ◀

Deductions may be made from the wages of consenting state employees with the approval of the state board of finance.

➤ **WAGE GARNISHMENT** ◀

The lesser of 20% of disposable weekly pay, or the amount by which disposable weekly pay exceeds 40 times the federal minimum wage in effect during the week the garnishment is to occur, may be withheld. These maximums are reduced by \$25 for a documented dependent who lives with the employee. The state has no provisions prohibiting discharge, but federal law prohibits discharging an employee for any single indebtedness. Garnishments may last for up to 120 days. Employers must continue to hold the non-exempt portion of the employee's wages as they accrue through the last pay period ending on or before 120 days from the date of the garnishment summons, until the debt is paid off, or until the employee terminates, whichever occurs first.

➤ **WAGE PAYMENT ON TERMINATION** ◀

Employee who quits: Next payday.

Employee who's fired: Next payday.

➤ **WAGE PAYMENTS** ◀

Payday requirements: At least monthly, or on regular, predesignated paydays.

Direct deposit: Employers may not require employees to be paid electronically.

➤ **WHISTLEBLOWING** ◀

Provisions apply to state employees only.

➤ **WORK AUTHORIZATION** ◀

No general provision.

➤ **WORKERS' COMPENSATION** ◀

Click on the following link https://dlr.sd.gov/workers_compensation/default.aspx to access the South Dakota Department of Labor Workers' Compensation home page.