

## Alabama

### Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1, 2015- Dec. 31, 2016)

#### Topics

##### **I. Discrimination**

No new laws or regulations enacted in 2015 or 2016.

##### **II. Pre-Employment Inquiry Guidelines**

Alabama has enacted a new law that creates a voluntary veterans' preference to be applied in hiring, promotion, and retention decisions. A private employer may adopt an employment policy that gives preference to a military veteran over other qualified applicants or employees. The policy must be in writing and applied consistently to all decisions regarding hiring, promotion, or retention during a reduction in force. The law defines "veteran" as a person who has served on active duty in the United States armed forces and who was separated with an honorable discharge.

In applying the veterans' preference policy, an employer may require an applicant or employee to submit proof of military service and honorable discharge in the form of a Form DD214, the Department of Defense Report of Separation. The Alabama Department of Veterans' Affairs and/or the Alabama Department of Labor will be available to assist employers in determining if an applicant is a veteran, to the extent permitted by law and in a manner that protects the applicant's right of privacy. The new law also provides that an employer who applies the veterans' preference will not be deemed in violation of any state or local equal employment opportunity law.

Code of Alabama § 25-1-52; Acts 2105, No. 15-314 (Effective Date 09/01/2015)

##### **III. Family and Medical Leave**

No new laws or regulations enacted in 2015 or 2016.

##### **IV. Wage and Hour Laws**

###### **A. Uniform Minimum Wage Act**

The new law prohibits local governments from enacting or administering laws that provide a minimum wage or employment benefit greater than that provided under state or federal law. Such benefits include, but are not limited to, paid or unpaid leave, vacation, minimum wage, or work scheduling. Any existing local government law that is inconsistent with the new law is void.

In addition, the law emphasizes that the state maintains the right, through the legislature, to regulate collective bargaining under federal labor laws. The measure clarifies that no law shall require an employer or multi-employer association to agree to any provisions that are mandatory or non-mandatory subjects of collective bargaining under federal labor laws. Such subjects include, but are not limited to, restrictions on an employer's right to engage in collective bargaining with a labor organization, lock out employees, or operate during a work stoppage.

Code of Alabama § 25-7-40, 41-45; Acts 2016, No. 16-18, § 3 (Effective 02/25/2016).

## **B. Liability for not Garnishing Wages for Child Support**

Under this new law, an employer who pays an employee in a manner intending to protect the employee's wages from being garnished or withheld as child support payments will be personally liable for the amount of child support owed.

Code of Alabama § 30-3-69.1. Acts 2015, No. 15-365, § 1, (Effective Date 09/01/2015)

## **V. Drug Testing**

No new laws or regulations enacted in 2015 or 2016.

## **VI. Noncompete and Other Employment Agreements**

### **Restrictive Covenants**

Alabama has made numerous amendments to its law to clarify and restate the law relating to restrictive covenants. The amendments repeal and replace Ala. Code 8-1-1, which is the state's non-competition agreement statute.

**General Non-Competition Statute:** The amended statute keeps language providing that every contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind otherwise than is provided by the law is void.

The amended statute provides that, except as otherwise prohibited by law, the following contracts are allowed to preserve a "protectable interest:"

- A contract between two or more persons or businesses or a person and a business limiting their ability to hire or employ the agent, servant, or employees of a party to the contract is permitted where the agent, servant, or employee holds a position uniquely essential to the management, organization, or service of the business.
- An agreement between two or more persons or businesses or a person and a business to limit commercial dealings to each other.
- One who sells the goodwill of a business may agree with the buyer to refrain from carrying on or engaging in a similar business and from soliciting customers of such business within a specified geographic area so long as the buyer, or any entity deriving title to the goodwill from that business, carries on a like business therein, subject to reasonable time and place restraints. Restraints of one year or less are presumed to be reasonable.
  - Notable changes: "Specified country, city, or part thereof" became "specified geographic area." Adds "subject to reasonable time and place restraints" and presumption of reasonableness timeframe.
- An agent, servant, or employee of a commercial entity may agree with such entity to refrain from carrying on or engaging in a similar business within a specified geographic area so long as the commercial entity carries on a like business therein, subject to reasonable restraints of time and place. Restraints of two years or less are presumed to be reasonable.

- Notable changes: Adds “of a commercial entity”; “Specified country, city, or part thereof” becomes “specified geographic area”; Adds “subject to reasonable time and place restraints” and presumption of reasonableness timeframe.
- An agent, servant, or employee of a commercial entity may agree with such entity to refrain from soliciting current customers, so long as the commercial entity carries on a like business, subject to reasonable time restraints. Restraints of 18 months or for as long as post-separation consideration is paid for such agreement, whichever is greater, are presumed to be reasonable.
  - Notable changes: Adds “of a commercial entity”; Changes “old customers” to “current customers”; Removes “within a specified county, city, or part thereof”; Adds “subject to reasonable time restraints” and presumption of reasonableness criteria.
- Upon or in anticipation of dissolution of a commercial entity, partners, owners, or members, or any combination thereof, may agree that none of them will carry on a similar commercial activity in the geographic area where the commercial activity has been transacted.
  - Notable changes: Changes “of the partnership” to “of a commercial entity”; Adds “owners, or members, or any combination thereof”; Changes “similar business” to “similar commercial activity”; Changes “within the same county, city or town, or within a specified part thereof” to “geographic area”; Changes “partnership business” to “commercial activity.”

**Protectable Interests:** A new law provides that a “protectable interest” includes all of the following:

- Trade secrets (Ala. Code § 8-27-2).
- Confidential information, including, but not limited to: 1) Pricing information and methodology; 2) Compensation; 3) Customer lists; 4) Customer data and information; 5) Mailing lists; 6) Prospective customer information; 7) Financial and investment information; 8) Management and marketing plans; 9) Business strategy, technique, and methodology; 10) Business models and data; 11) Processes and procedures; and 12) Company-provided files, software, code, reports, documents, manuals, and forms used in the business that may not otherwise qualify as a trade secret but which are treated as confidential to the business entity, in whatever medium provided or preserved, such as in writing or stored electronically.
- Commercial relationships or contacts with specific prospective or existing customers, patients, vendors, or clients.
- Customer, patient, vendor, or client goodwill associated with any of the following: 1) An ongoing business, franchise, commercial, or professional practice, or trade dress. 2) A specific marketing or trade area.
- Specialized and unique training involving substantial business expenditure specifically directed to a particular agent, servant, or employee, provided that

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such training is specifically set forth in writing as the consideration for the restraint.

However, job skills in and of themselves, without more, are not protectable interests.

**Validity:** To be valid, any contract or agreement must be written, signed by all parties, and supported by adequate consideration.

**Void Restraints / Blue Pencil:** If a contractually specified restraint is overly broad or unreasonable its duration, a court may void the restraint in part and reform it to preserve the protectable interest(s). If a contractually specified restraint is not listed above as a contract that is allowed to preserve a "protectable interest," a court may void the restraint in its entirety.

**Enforcing & Defending Against Agreements:** The party seeking enforcement of the covenant has the burden of proof on every element. The party resisting enforcement of the covenant has the burden of proving the existence of undue hardship, if raised as a defense.

**Remedies:** The remedies available for breach of an agreement subject to this act are injunctive and other equitable relief as may be appropriate with respect to any actual or threatened breach.

**Professional Exemption:** The law must not be construed to eliminate any professional exemption recognized by Alabama law.

**Public Policy Declaration:** The Act expresses fundamental public policies of Alabama. It governs and must be applied instead of any foreign laws that might otherwise be applicable in those instances when the application of those foreign laws would violate a fundamental public policy expressed in the Act.

**Other Laws:** All laws or parts of laws that conflict with the Act are repealed.

The repealed and replaced law will be codified at Alabama Code section 8-1-1. All other provisions within the Act have been codified at Code of Alabama § 8-1-172, 190-197; Acts 2015, No. 15-465, § 1 (Effective 01/01/2016).

## **VII. Workplace Safety**

No new laws or regulations enacted in 2015 or 2016.

## **VIII. Workers' Compensation**

No new laws or regulations enacted in 2015 or 2016.

## **IX. Miscellaneous**

### **A. Right to Work**

The Alabama Right to Work Amendment, also known as Amendment 8, was on the ballot as a legislatively referred constitutional amendment for voters in Alabama on November 8, 2016. Based on the results from November 8, 2016, the amendment was approved.

Having long been a right-to-work state, Alabama's Right to Work statutes are codified at Alabama Code § 25-7-30 et seq. The Alabama Constitutional amendment gives businesses additional assurances. The amendment declares that it is the public policy of Alabama that the right of persons to work may not be denied or abridged on account of union membership.

It prohibits an agreement to deny the right to work, or condition prospective employment, on the basis of membership or nonmembership in a labor union or organization. An employer could not require a person, as a condition of employment, to pay dues, fees, or other charges of any kind to a labor union or labor organization. Finally, the amendment does not impact an existing collective bargaining agreement (CBA) in force at the time of ratification unless the CBA is renewed or extended after ratification.

Voters approved Amendment on 11/8/2016, awaiting approval by Governor.

#### **B. Taxpayer Fraud Prevention Act**

The new law amends the Alabama Taxpayer Fraud Prevention Act by repealing the provision that had allowed taxpayers to use income tax withholding exemption certificates if they opted not to have income taxes withheld. Alabama law provides individual taxpayers the option of having no income taxes withheld from their paycheck if the individual provides the individual's employer with a withholding exemption certificate. The exemption applies if the employee (1) incurred no income tax liability for the preceding tax year and (2) anticipates that he or she will not incur a tax liability for income tax imposed for the current year.

The amended law prevents tax avoidance by requiring an individual employee to file an income tax return with the Department of Revenue and claim a refund. Accordingly, the amended law repeals the provision allowing an employee to submit a withholding exemption certificate that claims the employee will have no tax liability. An employer must submit to the state Department of Revenue a copy of any withholding exemption certificate on which an employee claims eight or more exemptions. The Department of Revenue will publish downloadable withholding forms (Alabama Department of Revenue Form A-4) in English and other languages.

Code of Alabama § 40-18-73; Acts 2015, No. 15-504, § 3 (Effective Date 09/01/2015)

#### **C. Blue Law Repealed**

Alabama has repealed a statute that prohibited many employers from compelling employees to work on Sunday.

The repealed law was codified at Code of Alabama §13A-12-A.