

South Dakota

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

No new laws or regulations enacted in 2015 or 2016.

III. Family and Medical Leave

No new laws or regulations enacted in 2015 or 2016.

IV. Wage and Hour Laws

A. 2017 Minimum Wage Increase

The South Dakota Department of Labor and Regulation adjusts the minimum wage on an annual basis in accordance with any cost of living increases measured by the Consumer Price Index. Accordingly, the minimum wage in South Dakota will increase on January 1, 2017 to \$8.65 per hour for non-exempt employees. State law requires employers to pay tipped employees no less than 50 percent of the prevailing state minimum wage. For tipped employees, the minimum wage will increase to \$4.325 per hour.

(Effective Date 01/01/2017).

B. Sub-Minimum Wage

A new statute allows an employer to pay employees under age 18 \$7.50 per hour, which is less than the state's generally applicable minimum wage of \$8.50 per hour. Moreover, the sub-minimum wage will not be adjusted annually, unlike the generally applicable minimum wage which, effective 2016, may be annually increased.

However, employers cannot wholly or partially displace an employee to hire a sub-minimum wage employee, i.e., cannot reduce the employee's hours, wages, or employment benefits.

The new law will be codified in S.D. Codified Laws § 60-11 (Effective Date 07/01/2015).

V. Drug Testing

No new laws or regulations enacted in 2015 or 2016.

VI. Noncompete and Other Employment Agreements

No new laws or regulations enacted in 2015 or 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. Independent Contractor Affidavit

New workers' compensation (WC) laws provide that, if an independent contractor who is not an employer or general contractor and not covered under a WC insurance policy signs a qualifying "affidavit of exempt status," a rebuttable presumption exists s/he is not an employee for WC purposes.

The affidavit must be on a form designed by the Division of Insurance (DOI), notarized, and contain substantively the following information:

- A statement that the individual:
 - Is not an employee and does not want a WC insurance policy;
 - Has read, signed, and understands the attached exempt status fact sheet (see below);
 - Understands s/he will be considered an independent contractor and will not be considered an employee under WC laws;
 - Understands s/he will be ineligible for compensation under WC laws;
 - Understands signing the affidavit creates a rebuttable presumption s/he is not an employee for WC purposes;
 - Understands signing the affidavit does not affect the rights or coverage of any of his or her employees;
 - Is not signing the affidavit or providing information as a result of force, threat, coercion, compulsion, or duress; and
 - Understands knowingly providing false information on an affidavit is a Class 2 misdemeanor.
- An exempt status fact sheet attached to the affidavit, which:
 - Details the legal requirements for determining whether a person is an independent contractor; and
 - Contains a statement that the affiant believes s/he is an independent contractor given the preceding list of legal requirements.

An employer or general contractor is not required to accept an affidavit of exempt status as a substitute for a certificate of workers' compensation coverage. Soliciting or providing false information on an affidavit of exempt status with actual knowledge is a Class 2 misdemeanor.

The law authorizes the DOI to create regulations concerning applicable definitions, a template affidavit, as well as the process and documentation required, for filing the affidavit.

S.D. Codified Laws § 62-1-19 et. seq. (Effective Date 07/01/2015).

B. Breastfeeding

A new law provides that a mother may breastfeed her child in any public or private location where she and child are otherwise authorized to be present if the mother complies with all other state and municipal laws. Although it does not specifically mention employers, it can be construed to include places of employment.

S.D. Codified Laws § 25-5-35 (Effective Date 07/01/2015).