

Wyoming

Employment Law Workbook Addendum

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

Topics

I. Discrimination

National Guard Protections

Wyoming's Military Service Relief Act prohibits discrimination against, and provides reemployment rights and other benefits for, persons who must leave employment to perform service in the uniformed services of the United States. The Act defines "uniformed services" as the armed forces, the Army National Guard and the Air National Guard, the commissioned corps of the public health service and any other category of persons designated by the President in time of war or emergency. This amendment modifies the definition of "uniformed services" to include members of the National Guard of any state. Thus, a Wyoming employee who is a member of the National Guard of another state is entitled to the employment protections and other benefits afforded under the Act.

Wyo. Stat. § 19-11-102, Wyo. Stat. § 19-11-103, Wyo. Stat. § 19-11-105, and Wyo. Stat. § 19-11-108 (Effective Date 07/01/2016).

II. Pre-Employment Inquiry Guidelines

Wyoming has enacted a law that creates a voluntary veterans preference to be applied in hiring and promotion decisions. A private employer may grant preference to a military veteran, a spouse of a disabled veteran, or a surviving spouse of a deceased veteran in hiring and promotion decisions. The law defines "veteran" as a member of the military forces of the United States whose written evidence of separation from the military forces shows an honorable discharge or the rendition of honorable military service. The law defines a "disabled veteran" as a veteran who has a permanent and total disability certified by the United States Veterans Administration or by the retirement board of one of the branches of the armed forces. In addition, the law provides that an employer's use of the veterans preference shall not be considered a discriminatory or unfair employment practice under local or state equal employment opportunity law, provided that the use of the preference was not based in any manner on consideration of a characteristic, attribute or category enumerated in state law as constituting a discriminatory or unfair employment practice.

Wyo. Stat. § 19-14-111 (Effective Date 07/01/2016).

III. Family and Medical Leave

No new laws or regulations enacted in 2015 or 2016.

IV. Wage and Hour Laws

The final wages statute has been amended to provide that, when an employee quits or is fired, final wages must be paid no later than the next regularly scheduled payday. Previously, final wages were due within five working days of employment ending.

Wyo. Stat. § 27-4-104 (Effective Date 03/05/2015).

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**

Occupational Health and Safety Rule Amendments

The federal Occupational Safety and Health Administration (OSHA) adopted increased penalties for certain violations as of August 2, 2016. Wyoming amended its occupational safety and health rules to adopt these increased penalties for its own occupational health and safety statutes. Wyoming's occupational safety and health penalty statute provides that employers will incur penalties for:

- willfully and knowingly violating the Occupational Health and Safety Act, or any safety and health standards, rules or regulations, whether the violation is of a serious or not serious nature;
- violating posting requirements; and
- failing to correct a violation for which a notice of violation has been issued.

The amended rules set forth new maximum penalties for these items that follow the federal OSHA penalties:

- \$12,471 per violation for serious violations, other-than-serious violations, and posting requirement violations;
- \$12,471 per day beyond the abatement date for failure to abate; and
- \$124,709 per violation for willful or repeated violations.

The amended rules also remove the requirement that in assessing a penalty, consideration must be given to the appropriateness of the penalty regarding the size of the business of the employer, the gravity of the violation, the good faith of the employer, and the history of previous violations.

These amended rules were approved on an emergency basis. Regular rulemaking on the subject will not be finalized until November 2016.

The amended rules will be found in the Wyoming Code of Rules, Department of Workforce Services, OSHA Practice and Procedure Chapter 3, section 6 (Effective Date 08/18/2016).

VIII. **Workers' Compensation**

No new laws or regulations enacted in 2015 or 2016.

IX. **Miscellaneous**

A. Data Security Breach Notification

Wyoming law requires any employer that conducts business in Wyoming and that owns or licenses computerized data that includes personal information to notify affected individuals in the event of a data security breach. The notification must include a toll-free number the individual may call to contact the person collecting the data, or his or her agent, to obtain the contact information for the major credit reporting agencies.

This amendment adds specific requirements to the contents of the notification. Per the amendment, the notification must include:

- The types of personal identifying information that were or are reasonably believed to have been the subject of the breach;
- A general description of the breach incident;
- The approximate date of the breach of security, if that information is reasonably possible to determine at the time notice is provided;
- In general terms, the actions taken by the individual or commercial entity to protect the system containing the personal identifying information from further breaches;
- Advice that directs the person to remain vigilant by reviewing account statements and monitoring credit reports; and
- Whether notification was delayed as a result of a law enforcement investigation, if that information is reasonably possible to determine at the time the notice is provided.

The amendment also addresses notification requirements for businesses subject to the Health Insurance Portability and Accountability Act (HIPAA) and its accompanying regulations. Such businesses are deemed to be in compliance with this statute if the business notifies affected Wyoming customers or entities in compliance with HIPAA requirements.

Wyo. Stat. § 40-12-502 (Effective Date 07/01/2015).

B. Insurance Availability

Under current law, a small employer carrier must offer coverage to all of the small employer's eligible employees with the exception of late enrollees. A small employer carrier cannot modify health benefit plans to restrict or exclude coverage for diseases and medical conditions or services. The new law clarifies that the small employer carrier may also offer coverage to the employees' dependents.

Wyo. Stat. §. 26-19-306(c)(vi) (Effective Date 07/01/2015).