

PANORAMIC

# EMPLOYMENT: NORTH AMERICA

USA - Pennsylvania

 LEXOLOGY



# Employment: North America

**Generated on: August 29, 2024**

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. Copyright 2006 - 2024 Law Business Research

# Contents

## Employment: North America

### STATE SNAPSHOT

- Key considerations
- Emerging issues
- Proposals for reform

### EMPLOYMENT RELATIONSHIP

- State-specific laws
- Misclassification
- Contracts

### HIRING

- Advertising
- Background checks

### WAGE AND HOUR

- Pay
- Hours and overtime
- Record keeping

### DISCRIMINATION, HARASSMENT AND FAMILY LEAVE

What is the state law in relation to:

### PRIVACY IN THE WORKPLACE

- Privacy and monitoring
- Bring your own device
- Off-duty
- Gun rights

### TRADE SECRETS AND RESTRICTIVE COVENANTS

- Intellectual property
- Restrictive covenants
- Non-compete

### LABOR RELATIONS

- Right to work
- Unions and layoffs

### DISCIPLINE AND TERMINATION

- State procedures

At-will or notice  
Final paychecks

# Contributors

## USA - Pennsylvania

Morgan, Lewis & Bockius LLP

**Morgan Lewis**

---

**David C. Dziengowski**

david.dziengowski@morganlewis.com

**Eric C. Kim**

eric.kim@morganlewis.com

**Ali M. Kliment**

ali.kliment@morganlewis.com

---

## STATE SNAPSHOT

### Key considerations

#### Which issues would you most highlight to someone new to your state?

While federal law generally applies to employers with 15 or more employees, Pennsylvania law applies to employers with four or more employees.

Some Pennsylvania statutes include individual liability, depending on scope of involvement. For example, under the Pennsylvania Wage Payment and Collection Law, executive officers can be held individually liable if they played an active role in the decision not to pay wages to an employee. Likewise, under the Pennsylvania Human Relations Act, individual employees can be held liable if they aid and abet discrimination in the workplace.

Under Pennsylvania law, continued employment is not sufficient consideration for a valid restrictive covenant agreement. Instead, restrictive covenant agreements must be secured either at the start of the employment relationship or after receipt of new and valuable consideration, such as increased compensation or a promotion.

**Law stated - 23 July 2024**

### Key considerations

#### What do you consider unique to those doing business in your state?

Pennsylvania's anti-discrimination and retaliation statute (Pennsylvania Human Relations Act) applies to a broader range of employers than federal law. Additionally, the PHRA and Pennsylvania's statute addressing wage and hour law (Pennsylvania Wage Payment and Collection Law) have individual liability, when federal law typically does not. Finally, like some other states in the country, Pennsylvania has a large metropolitan area (i.e., the City of Philadelphia), which provides its own employment laws of which employers must be aware.

**Law stated - 23 July 2024**

### Key considerations

#### Is there any general advice you would give in the labor/employment area?

Employers should consult with a Pennsylvania licensed attorney when confronted with a labor and employment issue. Where litigation is unavoidable and federal court is not an option, employers should be aware that state courts in Pennsylvania follow unique, if not arcane, rules of civil procedure and evidence.

**Law stated - 23 July 2024**

### Emerging issues

## What are the emerging trends in employment law in your state, including the interplay with other areas of law, such as firearms legislation, legalization of marijuana and privacy?

In the past few years, Pennsylvania has passed and/or amended some of its existing laws to be more protective of employee rights. And, Philadelphia – Pennsylvania’s largest city – has been even more active in doing so. For example, in 2023 the Pennsylvania Human Relations Commission passed new regulations expanding the bases upon which employers may not discriminate against or harass employees under the Pennsylvania Human Relations Act (PHRA). In particular, these changes now prohibit discrimination against, or harassment of employees based upon, an expanded definition of race and sex. Additionally, in July 2024, Governor Shapiro signed the Fair Contracting for Health Care Practitioners Act, which restricts the ability of employers to enter into non-compete covenants with healthcare practitioners.

With these changes, however, Pennsylvania has not expanded employee rights or protections as much as other states throughout the country, such as California, Illinois, and New York.

**Law stated - 23 July 2024**

## Proposals for reform

### Are there any noteworthy proposals for reform in your state?

Pennsylvania legislators and Governor Joshua Shapiro have proposed increasing the state’s minimum wage to \$15 per hour. The Pennsylvania House of Representatives passed a bill to increase the minimum wage in June 2023 but that bill did not make it through the state Senate. There has been renewed effort to pass similar bills to increase the minimum wage since then.

Additionally, in May 2024, the Pennsylvania House passed a bill to amend the Pennsylvania Equal Pay Law to also prohibit pay discrimination based on race and ethnicity, add protections for retaliation, and require employers to include expected compensation or the compensation range for any position advertised as a job opening (and upon reasonable request).

**Law stated - 23 July 2024**

## EMPLOYMENT RELATIONSHIP

### State-specific laws

#### What state-specific laws govern the employment relationship?

In Pennsylvania, several state-specific laws are applicable to the employment relationship. The most significant laws regulating the employment relationship are the following:

- PHRA
- Pennsylvania Minimum Wage Act (PMWA)
- Pennsylvania Wage Payment and Collection Law (PWPCCL)

- Pennsylvania Equal Pay Law (PEPL)
- Pennsylvania Whistleblower Law (PWL)

Law stated - 23 July 2024

## State-specific laws

### Who do these cover, including categories of workers?

The PHRA generally covers employers with four or more employees and applies to employees, applicants, and independent contractors.

The PMWA covers employers and any person acting in an employer's interest in relation to employees and applies to any individual employed by an employer.

The PWPCL covers employers and, in some cases, employers' agents and officers. The PWPCL is protective of the wages of employees, including senior executives, inclusive of earnings along with fringe benefits or wage supplements.

The PEPL generally covers employers and any person acting in the interest of an employer in relation to employees and applies to employees who are not covered by the federal minimum wage law.

The PWL covers public bodies and certain employers who receive public funding to perform work or services and applies to persons who perform services for wages or other remuneration under a contract.

Law stated - 23 July 2024

## Misclassification

### Are there state-specific rules regarding employee/contractor misclassification?

Pennsylvania does not have a single definition of independent contractor. Rather, varying tests are applied to determine whether a worker is properly classified as an independent contractor depending on the law at issue.

Under Pennsylvania common law, courts consider a variety of factors to determine whether an employee/employer relationship exists. The primary factors are control over the work being completed and the manner in which it is to be performed. For purposes of wage and hour law, the Pennsylvania Minimum Wage Act adopts the economic reality test used by federal courts when analyzing the Fair Labor Standards Act.

In addition, the Pennsylvania Department of Labor and Industry administers the Construction Workplace Misclassification Act that provides a specific definition of independent contractors in the construction industry.

Law stated - 23 July 2024



## Contracts

### Must an employment contract be in writing?

No. Employment contracts may be written or oral.

Law stated - 23 July 2024

## Contracts

### Are any terms implied into employment contracts?

Employees owe a common law duty of loyalty to their employers. This duty requires an employee to act in good faith and solely for the benefit of their employer in all matters for which the employee is employed.

Law stated - 23 July 2024

## Contracts

### Are mandatory arbitration agreements enforceable?

Yes. Mandatory arbitration agreements are generally enforceable, provided that (1) the employee manifests an intent to be bound by the agreement, (2) the agreement's terms are sufficiently definite, and (3) there is an exchange of consideration, such as new or continued employment.

Law stated - 23 July 2024

## Contracts

### How can employers make changes to existing employment agreements?

Agreements may be modified by a subsequent agreement, provided that the subsequent agreement satisfies contract formation requirements.

Parties may orally modify a written contract even when they previously agreed that further modifications would be made in writing, but this requires proof by persuasive evidence of the intent to waive the requirement that amendments be made in writing.

Law stated - 23 July 2024

## HIRING

## Advertising

### What are the requirements relating to advertising open positions?

Pennsylvania law generally tracks federal law relating to advertising open positions. It is unlawful to print or publish any notice or advertisement relating to employment indicating a preference, limitation, specification or discrimination based upon characteristics protected

by the Pennsylvania Human Relations Act, unless such preference is based upon a good-faith occupational qualification for employment.

In addition, under the PA Code, employment agencies are specifically prohibited from advertising a position unless the agency has a current, legitimate job order for that position. And, pursuant to the PA Code, advertisements for positions published by an employment agency must accurately reflect the information and requirements given by the employer in seeking the agency's services in supplying candidates for the position.

**Law stated - 23 July 2024**

## **Background checks**

### **(a) Criminal records and arrests**

Pursuant to the Pennsylvania Criminal History Record Information Act (CHRIA), in deciding whether to hire an applicant, an employer may only use information that is part of the applicant's criminal history record if it relates to the applicant's suitability for the position. Additionally, under the CHRIA, employers may only consider felony or misdemeanor-level convictions when making hiring decisions.

Employers should not consider an arrest that did not result in a conviction, a pending criminal case, or an offense that does not rise to the level of a misdemeanor (such as a summary level offense).

There are also local laws, such as the Philadelphia Fair Criminal Record Screening Standards Ordinance (FCRSSO) and Erie County's Erie County fair chance ordinance, which place additional restrictions on an employer's consideration of criminal history (which supplement existing obligations that may apply to the employer based on the Fair Credit Reporting Act (FCRA)). Under the FCRSSO, employers may only take an adverse employment action against an employee or applicant based on a criminal conviction (that cannot be more than seven years old) if it is justified by business necessity. If an employer decides to take such an action, it is required to give the individual written notice and then wait 10 business day before rendering a final decision to allow the individual to respond.

Under the Erie Ordinance, covered employers are prohibited from making any inquiry regarding or requiring any person to disclose or reveal a criminal conviction before the employer extends a conditional offer; employers are also prohibited from publishing any job posting or advertisement that indicates a preference or limitation based upon criminal history.

**Law stated - 23 July 2024**

## **Background checks**

### **(b) Medical history**

Pennsylvania employers may not use tests that tend to screen out individuals with a disability unless the tests can be shown as job-related. Pennsylvania employers that are subject to the Americans with Disabilities Act (ADA) should also be mindful of the limitations imposed on disability-related inquiries by the ADA, which generally prohibits inquiries seeking medical

information before an offer is extended and which also requires that such inquires be both job related and consistent with business necessity.

**Law stated - 23 July 2024**

## **Background checks**

### **(c) Drug screening**

Pennsylvania law does not regulate or prohibit private employers from performing drug tests. In addition, Pennsylvania law does not limit or regulate the types of substances an employer can screen for, or the circumstances under which a drug test can be performed. However, the US Court of Appeals for the Third Circuit has “predicted” that the Pennsylvania Supreme Court would apply a balancing test to determine whether an employer’s drug and alcohol testing program invades an employee’s privacy.

Pennsylvania’s Medical Marijuana Act also generally prohibits employers from taking an adverse action against a medical marijuana cardholder because the employee is certified to use medical marijuana, unless the employee used, possessed, or was impaired by marijuana in the workplace. Additionally, a 2021 amendment to the Philadelphia code prohibits, with a few limited exceptions, Philadelphia employers from testing most applicants for marijuana as a condition of employment.

**Law stated - 23 July 2024**

## **Background checks**

### **(d) Credit checks**

Pennsylvania has not enacted a statute that limits employer discretion with respect to conducting credit checks or considering credit-related information. In addition, there is no Pennsylvania equivalent of the federal FCRA.

Under the Philadelphia Unlawful Credit Screening Practices in Employment Act, however, it is unlawful for an employer to request or consider credit information about an applicant or employee unless certain exceptions apply. In addition, the Philadelphia Unlawful Credit Screening Practices in Employment Act provides that an employer that intends to take an adverse employment action with respect to any person, based in whole or in part on credit information, must provide that person with a written copy of the information relied upon, the right to obtain and dispute such information, and such other information as may be required by applicable law, such as the federal FCRA.

**Law stated - 23 July 2024**

## **Background checks**

### **(e) Immigration status**

Pennsylvania employers cannot discriminate against employees based on immigration status. Once an employee has proven to be eligible to work in the United States, the individual's immigration status cannot be used in any other employment decisions.

**Law stated - 23 July 2024**

## **Background checks**

### **(f) Social media**

There is no specific Pennsylvania statute precluding the use of social media when making employment-related decisions.

**Law stated - 23 July 2024**

## **Background checks**

### **(g) Other**

An employer cannot require an applicant to take a polygraph test as a condition of employment. An employer who violates this law is guilty of a second-degree misdemeanor.

**Law stated - 23 July 2024**

## **WAGE AND HOUR**

### **Pay**

#### **What are the main sources of wage and hour laws in your state?**

The Pennsylvania Minimum Wage Act.

**Law stated - 23 July 2024**

### **Pay**

#### **What is the minimum hourly wage?**

As of July 2024, Pennsylvania's minimum wage is the same as the federal minimum wage (\$7.25/hour).

**Law stated - 23 July 2024**

### **Pay**

#### **What are the rules applicable to final pay and deductions from wages?**

The Pennsylvania Wage Payment and Collection Law (PWPCCL) requires all earned wages of a terminated employee to be paid by the next regular payday. Deductions cannot be

made absent specific, limited exceptions provided by the PWPCCL, which include deductions authorized in writing by the employee.

**Law stated - 23 July 2024**

## **Hours and overtime**

### **What are the requirements for meal and rest breaks?**

With the exception of employees who are minors, Pennsylvania employers are not required to give breaks to employees. Employers are required to provide break periods of at least 30 minutes to minor employees when they work five or more consecutive hours.

**Law stated - 23 July 2024**

## **Hours and overtime**

### **What are the maximum hour rules?**

The Pennsylvania Minimum Wage Act does not include a maximum hour rule, other than for minors.

**Law stated - 23 July 2024**

## **Hours and overtime**

### **How should overtime be calculated?**

Pennsylvania employers are required to pay an overtime rate equal to one-and-a-half times the employee's regular rate for any hours worked over 40 per workweek. The Pennsylvania Supreme Court has held that the Pennsylvania Minimum Wage Act does not permit employers to calculate an employee's regular rate of pay using the "fluctuating workweek" method permitted under federal law. As a result, when calculating the "regular rate" for salaried, non-exempt employees, an employer must divide the employee's fixed weekly salary by 40 hours, regardless of the number of hours the employee worked that week.

**Law stated - 23 July 2024**

## **Hours and overtime**

### **What exemptions are there from overtime?**

- Executive employees
- Administrative employees
- Professional employees
- Outside salespeople
- Aircraft, boat, and trailer salespeople

- Seamen
- Cab drivers
- Farm laborers
- Domestic service employees
- Air and motor carrier employees
- Newspaper deliverymen
- Golf caddies
- Switchboard operators

Law stated - 23 July 2024

## Record keeping

### What payroll and payment records must be maintained?

For a period of three years, an employer must maintain records containing the following information for each employee:

- name;
- home address, including zip code;
- regular hourly rate of pay;
- occupation;
- starting and ending work times;
- the number of hours worked daily and weekly;
- total daily or weekly straight-time wages;
- total overtime compensation;
- additions to or deductions from wages;
- total wages paid; and
- dates of each payment and pay period covered.

Law stated - 23 July 2024

## DISCRIMINATION, HARASSMENT AND FAMILY LEAVE

### Protected categories

#### (a) Age?

The Pennsylvania Human Relations Act prohibits employers with four or more employees from discriminating against employees, applicants, and certain independent contractors and volunteers on the basis of certain enumerated protected characteristics. It also covers discrimination in housing, commercial property, education, and public accommodations.

The PHRA precludes discrimination based on age (i.e., 40 years of age and older).

**Law stated - 23 July 2024**

## **Protected categories**

### **(b) Race?**

The Pennsylvania Human Relations Act precludes discrimination based on race and skin color. In 2023, the Pennsylvania Human Relations Commission passed new regulations explaining that discrimination on the basis of “race” includes traits associated with race, such as hair texture and protective hairstyles; ancestry, national origin, or ethnic characteristics; and interracial marriage or association.

In May 2024, the Pennsylvania House passed a bill to amend the Pennsylvania Equal Pay Law to also prohibit pay discrimination based on race and ethnicity, add protections for retaliation, and require employers to include expected compensation or the range for any position advertised as a job opening (and upon reasonable request). The bill is pending with the Pennsylvania Senate.

**Law stated - 23 July 2024**

## **Protected categories**

### **(c) Disability?**

The Pennsylvania Human Relations Act (PHRA) precludes discrimination based on disability, which can include disabilities related to pregnancy and childbirth. It also protects individuals who require the use of support animals for certain disabilities, such as blindness, deafness, or physical handicap.

The PHRA defines a disability as a physical or mental impairment that “substantially limits” one or more major life activities; a record of an impairment; and being regarded as having an impairment. An impairment does not include the current, illegal use of or addiction to a controlled substance. The PHRA requires covered employers to provide a reasonable accommodation to covered individuals with a handicap or disability unless doing so would cause an undue hardship.

**Law stated - 23 July 2024**

## **Protected categories**

### **(d) Gender?**

The Pennsylvania Human Relations Act precludes discrimination based on sex. In 2023, the PHRC released new regulations explaining that “sex” includes: (1) pregnancy status, (2) childbirth status, (3) breastfeeding status, (4) sex assigned at birth, (5) gender identity or expression, (6) affectional or sexual orientation, and (7) differences in sex development.

Additionally, the Pennsylvania Equal Pay Law prohibits discrimination based on gender in the rate of pay for jobs that require equal skill, effort, and responsibility, and which are performed under similar working conditions.

**Law stated - 23 July 2024**

### **Protected categories** **(e) Sexual orientation?**

In 2023, the Pennsylvania Human Relations Commission released new regulations explaining that “sex” in the Pennsylvania Human Relations Act includes gender identity or expression, affectional or sexual orientation, and differences in sex development.

**Law stated - 23 July 2024**

### **Protected categories** **(f) Religion?**

The Pennsylvania Human Relations Act precludes discrimination based on religious creed, which the PHRC recently explained includes all aspects of religious observance and practice, as well as belief. Discrimination based on religious creed can be found due to failure to accommodate an individual’s religious beliefs, practices, or observances.

**Law stated - 23 July 2024**

### **Protected categories** **(g) Medical?**

The Pennsylvania Human Relations Act precludes discrimination based on medical impairments or conditions that constitute a disability, as defined above.

**Law stated - 23 July 2024**

### **Protected categories** **(h) Other?**

The Pennsylvania Military Affairs Act protects applicants and employees who are members of the National Guard or any one of the other reserve components of the US armed forces from employment discrimination.

**Law stated - 23 July 2024**

### **Harassment**



## | What is the state law in relation to harassment?

The Pennsylvania Human Relations Act prohibits harassment on the basis of race, color, national origin, religion, pregnancy, handicap/disability, age, gender, use of support animals, and educational status.

**Law stated - 23 July 2024**

## | Family and medical leave

### | What is the state law in relation to family and medical leave?

Pennsylvania does not have a specific family and medical leave law, such as the federal Family and Medical Leave Act.

**Law stated - 23 July 2024**

## PRIVACY IN THE WORKPLACE

### | Privacy and monitoring

#### | What are employees' rights with regard to privacy and monitoring?

Pennsylvania has a number of state and local statutes (including some common law) regarding privacy in the employment relationship. Those laws relate to: criminal background checks; polygraph testing; telephone and computer monitoring; and substance use testing.

Additionally, the Pennsylvania Wiretapping and Electronic Surveillance Control Act (the Wiretap Act) limits an individual or entity's ability to monitor another's activities and communications. Under the Wiretap Act, it is a third-degree felony to intentionally intercept, disclose, or use (or attempt to do so) any wire, electronic, or oral communication without the consent of all parties. While the law prohibits the intentional interception of wire electronic or oral communication, it does not prohibit visual surveillance and it does not address violations by co-workers.

Under Pennsylvania law, a person, entity, or state agency is prohibited from: publicly posting or displaying an individual's Social Security number; printing a Social Security number on any card required for an individual to access products or services by the person, entity, or state agency; requiring an individual to send a Social Security number online using an unencrypted connection; requiring an individual to use their Social Security number to access a website; printing a Social Security number on materials mailed to an individual unless otherwise legally required; or disclosing the Social Security number of a person who applies for a recreational license.

Workplace searches are governed under Pennsylvania common law, specifically tort law in the area of privacy. Employees have a right to be free from searches that constitute a tortious invasion of privacy. In making this determination, Pennsylvania courts balance the employee's privacy interest and the employer's interest in operating its business in a certain fashion.

**Law stated - 23 July 2024**

### **Privacy and monitoring**

#### **Are there state rules protecting social media passwords in the employment context and/or on employer monitoring of employee social media accounts?**

Pennsylvania has not enacted a state law regarding computer passwords, or limiting the monitoring of (or interception) employees' social media that would replace or supplement the federal Electronic Communications Privacy Act.

**Law stated - 23 July 2024**

### **Bring your own device**

#### **What is the latest position in relation to bring your own device?**

Pennsylvania does not have a "bring your own device" law. However, employers that adopt and create ad hoc policies to allow employees to bring their own mobile devices for work-related use should clarify any employer requirements relating to maintaining company confidential information on those devices, along with the employer's access of any information or data on the employee's personal device, as applicable.

**Law stated - 23 July 2024**

### **Off-duty**

#### **To what extent can employers regulate off-duty conduct?**

Pennsylvania law generally does not specify whether an employee's lawful off-duty activities are protected.

With respect to tobacco use, Pennsylvania law prohibits smoking in a public place, which includes workplaces, and does not prohibit owners of private or public property from prohibiting smoking on the property. However, certain exceptions apply, such as the workplace of a manufacturer, importer, or wholesaler of tobacco products; a manufacturer of tobacco-related products, including lighters; a tobacco leaf dealer or processor; a tobacco storage facility; and cigar bars and drinking establishments (with approval).

Additionally, Pennsylvania law permits the use of medical marijuana under the Medical Marijuana Act. The Medical Marijuana Act prohibits employers from discharging, threatening, refusing to hire, discriminating, or retaliating against an employee because of the employee's use of medical marijuana. However, the Act does not require an employer to accommodate the use of marijuana at the place of employment; limit the employer's right to discipline an employee for coming to work under the influence of medical marijuana when the employee's conduct falls below the normally accepted standard of care for that position; and/or require the employer to commit any act in violation of federal law.

**Law stated - 23 July 2024**

## Gun rights

### Are there state rules protecting gun rights in the employment context?

Pennsylvania does not have any laws that would interfere with an employer's right to ban an employee from bringing a gun onto company property. Without an express statute addressing this, Pennsylvania courts generally provide employers the right to control the workplace.

Law stated - 23 July 2024

## TRADE SECRETS AND RESTRICTIVE COVENANTS

## Intellectual property

### Who owns IP rights created by employees during the course of their employment?

Pennsylvania has no specific law on this issue, so federal law applies. Accordingly, Pennsylvania employers are generally not entitled to ownership of their employee's inventions unless the employee is specifically hired to create inventions or the employee agreed to assign any IP rights to the employer for work product created during their employment.

Law stated - 23 July 2024

## Restrictive covenants

### What types of restrictive covenants are recognized and enforceable?

Pennsylvania does not have a general statute or regulation governing restrictive covenants (non-competes), but courts applying Pennsylvania common law will find non-competes to be enforceable if they are:

- incident to an employment relationship between the parties and supported by consideration;
- reasonably necessary to protect the employer's legitimate interests; and
- reasonably limited in duration, scope, and geographic extent.

Courts in Pennsylvania have reiterated that non-compete agreements are not favored because they are restraints on trade. Therefore, courts will look at such restrictive covenants on a case-by-case basis to determine whether the burden on the employee of enforcing the covenants is reasonable in relation to the employer's legitimate interests.

Law stated - 23 July 2024

## Non-compete

## Are there any special rules on non-competes for particular classes of employee?

Pennsylvania does not have a general statute or regulation governing restrictive covenants (non-competes), but courts in Pennsylvania have reiterated that non-compete agreements are not favored because they are restraints on trade. Therefore, courts will look at such restrictive covenants on a case-by-case basis to determine whether the burden on the employee of enforcing the covenants are reasonable in relation to the employer's legitimate interests.

However, with regard to non-compete covenants for health care practitioners, Governor Shapiro signed into law on July 17, 2024 the Fair Contracting for Health Care Practitioners Act, which restricts the ability of employers to enter into non-compete covenants with healthcare practitioners that "has the effect of impeding" such practitioners' ability to treat or accept new patients. The healthcare practitioners covered by this new law include physicians, osteopaths, certified registered nurse anesthetists, certified registered nurse practitioners, and physician assistants. One exception allows an employer to "enforce a noncompete covenant if the length of the noncompete covenant is no more than one year, provided that the health care practitioner was not dismissed by the employer."

**Law stated - 23 July 2024**

## LABOR RELATIONS

### Right to work

#### Is the state a "right to work" state?

Pennsylvania is not a "right to work" state.

**Law stated - 23 July 2024**

### Unions and layoffs

#### Is the state (or a particular area) known to be heavily unionized?

Yes, Pennsylvania is one of the more heavily unionised states in the country, and the City of Philadelphia maintains the largest population of union membership within the commonwealth. According to the Bureau of Labor Statistics, in 2023, 12.9 per cent of wage and salary workers in Pennsylvania were union members, up from 12.7 per cent in 2022, during a year when union rates decreased nationwide. This 12.9 per cent is higher than the national average of 10 per cent in 2023, and places Pennsylvania in a group of 19 states with above-average unionization rates.

**Law stated - 23 July 2024**

### Unions and layoffs

#### What rules apply to layoffs? Are there particular rules for plant closures/mass layoffs?

Pennsylvania lacks its own state-level WARN Act, but the City of Philadelphia has the Worker Adjustment and Retraining Notification Act (WARN), requiring notice for group layoffs in the City of Philadelphia. Similar to the Federal WARN Act, the Philadelphia WARN Act requires written notice that shall include:

1. *The nature of the establishment affected by the closing or relocation of operations.*
2. *The reasons for the proposed closing or relocation.*
3. *An impact statement which shall include information concerning the:*
  1. *employer's payroll.*
  2. *number of employees to be affected by the proposed action.*
  3. *wages and other remunerations paid to those employees.*
  4. *the employer's efforts, if any, to find suitable employment for affected employees.*
  5. *amount of local tax revenue that will be lost as a result of the proposed action.*
4. *The proposed date of closing or relocation.*
5. *The employer's intentions, if any, to continue production at a new location.*
6. *Any plans the employer might have to sell the establishment, including a statement as to whether the employees have been given first right of refusal to buy and operate the establishment.*

Phila. WARN Act, § 9-1502.

Law stated - 23 July 2024

## DISCIPLINE AND TERMINATION

### State procedures

Are there state-specific laws on the procedures employers must follow with regard to discipline and grievance procedures?

Pennsylvania has no state-specific laws that govern employee discipline or grievance procedures. Attention should be paid, however, to any applicable collective bargain agreement, which may address such issues.

**Law stated - 23 July 2024**

### **At-will or notice**

#### **At-will status and/or notice period?**

Pennsylvania is an at-will employment state. At-will employment status may be altered by agreement. Pennsylvania does not impose a particular notice period upon employers or employees. A notice period may be imposed by agreement.

**Law stated - 23 July 2024**

### **At-will or notice**

#### **What restrictions apply to the above?**

Either the employee or the employer can terminate an at-will employment relationship at any time, provided that the reason for termination is not prohibited by law (e.g., unlawful discrimination or retaliation) or contract.

**Law stated - 23 July 2024**

### **Final paychecks**

#### **Are there state-specific rules on when final paychecks are due after termination?**

The Pennsylvania Wage Payment and Collection Law requires that employees receive their final paycheck on or before the next regularly scheduled pay date following their termination. This requirement applies regardless of whether the employee's termination is voluntary or involuntary.

*\* We would also like to thank Sean Caulfield, Chloe Keating, Margaret McDowell, Samantha Ojo, Caroline Robb, and Michael Taylor for their contributions.*

**Law stated - 23 July 2024**