

EMPLOYMENT: NORTH AMERICA

USA - Utah



Employment: North America

Quick reference guide enabling side-by-side comparison of key considerations, emerging issues and reform proposal for each state; the employment relationship; hiring; wage and hour laws; discrimination, harassment and family leave; privacy in the workplace; trade secrets and restrictive covenants; labour relations; and discipline and termination procedures.

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USA - Utah



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STATE SNAPSHOT

Key considerations

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

In many aspects of labor and employment law, Utah follows federal law. Highlights of some key state law differences include the following:

- As of March 2015 sexual orientation and gender identity are protected characteristics under Utah discrimination law.
- Employers with 15 or more employees in Utah cannot request an applicant to submit his or her social security number, date of birth, or driver's license number until the applicant has been offered a job, unless the employer needs such information to conduct pre-offer background checks, determine eligibility for government programs, or determine whether the applicant has previously worked for or applied to work for the employer and such checks and determinations are conducted on all applicants for the position being filled.
- At the time of hire, Utah employers must provide (or post) a wage notification specifying the day, place of payment and rate of pay.
- Drug testing must be conducted according to the employer's written policy, which must be distributed to employees.
- For post-employment covenants not to compete entered into on or after May 10, 2016, the period of the covenant cannot be more than one year from the day on which the employee is no longer employed by the employer. Specific provisions related to broadcasters were added in 2017.
- The Payment of Wages Act was revised in 2018 to indicate that a private right of action exists for wage claims. However, any wage claim of \$10,000 or less must be filed with the Utah Labor Commission and remedies exhausted therein, except in limited circumstances.

Law stated - 30 April 2021

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

Utah has a 5 per cent flat corporate tax rate, which is among the lowest rates in the United States. Utah's workforce is considered young and vibrant, with one-third estimated to be bilingual. The regulatory environment is positive for business, with fewer state regulations burdening employers than many other states.

Law stated - 30 April 2021

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

In Utah, it is advisable to plan to comply with federal labor and employment laws, but also to be familiar with those areas where Utah imposes additional obligations on employers, such as:

- sexual orientation and gender identity discrimination protection;
- drug testing pursuant to the employer's written policy;
- limits on the pre-job offer collection of an applicant's social security number, date of birth and driver's license number;
- wage notification requirements; and
- one-year limitation on post-employment covenants not to compete.

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?

Attempts to raise the Utah minimum wage above the federal level failed to achieve support in the past. By law, cities, towns and counties cannot raise the minimum wage above the federal minimum wage, so the minimum wage remains uniform throughout Utah.

Utah enacted a social media privacy law that prohibits employers from requesting an employee or applicant to disclose a username or password for access to the individual's personal online accounts. Employers cannot take adverse action, fail to hire, or otherwise discriminate against an employee or applicant for failure to disclose personal usernames and passwords (Utah Code §§ 34-48-102 ; 34-48-201).

In 2016, Utah enacted Utah Code § 34-49-202 , which requires employers of 15 or more people to provide “reasonable accommodations” for workers related to pregnancy, childbirth, breastfeeding, and related conditions, unless it creates an undue hardship on the business.

In 2018, Utah enacted the Utah Medical Cannabis Act. Utah Code § 4-41A-101 et seq. Utah clarified that private employers are not required to accommodate the use of medical cannabis and nothing affects the ability of a private employer to have policies restricting the use of medical cannabis by applicants or employees. Utah Code § 26-61a-111 . Regarding public employers, a state or political subdivision employee who has a valid medical cannabis card is not subject to adverse action for failing a drug test due to marijuana or tetrahydrocannabinol without evidence that the employee was impaired or otherwise adversely affected in the employee's job performance due to the use of medical cannabis. However, this provision does not apply where application would jeopardize federal funding, a federal security clearance, or any other federal background determination required for the employee's position, or if the employee's position is dependent on a license that is subject to federal regulations.

Effective May 4, 2022, Utah enacted Utah Code § 34-56-101 et seq. requiring an employer to exempt an employee or prospective employee from a covid-19 vaccine requirement if the employee or prospective employee submits a primary care provider's note stating that the employee or prospective employee was previously infected by covid-19 or a statement that receiving a covid-19 vaccine would be injurious to health or conflict with a sincerely held religious or personal belief. An employer may nonetheless require proof of vaccination if the employer establishes a nexus between the requirement and the employee's assigned duties. An employer may not keep or maintain a record or copy of an employee's proof of vaccination. It further requires employers to pay for all covid-19 testing an employee receives in relation to the workplace and prohibits an employer from keeping or maintaining a record or a copy of an employee's covid-19 test results.

Proposals for reform

Are there any noteworthy proposals for reform in your state?

In 2018 and 2019, there have been proposals in the legislature to reduce the number of employees from 15 to five in relation to the state discrimination laws, as well as creating a mini-Family and Medical Leave Act and paid leave law. However, to date, no such proposals have succeeded in the state legislature. In 2022, there was a proposal to amend the Utah Antidiscrimination Act to add a protection for certain race-based hairstyles in the workplace. The amendment failed to pass.

EMPLOYMENT RELATIONSHIP

State-specific laws

What state-specific laws govern the employment relationship?

Title 34 of the Labor Code contains the majority of the laws governing employer-employee relationships, including payment of wages. Title 34A of the Labor Code contains laws governing anti-discrimination, payment of wages, workers' compensation, occupational safety and health, genetic testing and other employment-related laws. Title 35A of the Workforce Service Code includes Utah's employment security (unemployment) law, new hire registry law and other workforce services laws.

Utah's Administrative Code includes the administrative rules governing employment issues which can primarily be found in Titles R600-R616 Labor Commission, and Titles R982-R994 Workforce Services.

Utah employers may not be held civilly liable for a good faith reference given to a prospective employer of an employee or former employee unless the current or former employee can prove by clear and convincing evidence that the information was disclosed with actual malice or intent to mislead. All common law privileges also apply. Utah Code § 34-42-1 .

Law stated - 30 April 2021

Who do these cover, including categories of workers?

Depending on the specific provision, these laws generally cover employees. Some provisions, including anti-discrimination laws, apply to applicants for employment.

Law stated - 30 April 2021

Misclassification

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

Utah has no specific independent contractor misclassification law, but defers to the Internal Revenue Service criteria for worker classification purposes.

For workers' compensation purposes, an 'independent contractor' is defined as any person engaged in the performance of any work for another party who, while so engaged, is:

- independent of the employer in all that pertains to the execution of the work;
- not subject to the routine rule or control of the employer;
- engaged only in the performance of a definite job or piece of work; and
- subordinate to the employer only in effecting a result in accordance with the employer's design (Utah Code §34A-2-103).

For unemployment insurance purposes, services performed for wages or under any contract of hire are considered to be employment unless:

- the individual is customarily engaged in an independently established trade, occupation, profession or business

of the same nature as that involved in the contract, and

- the individual is free from control over the means of performance of the services. Utah Code § 35A-4-204(3).

The Service Marketplace Platforms Act establishes a presumption that persons using a software platform to obtain customers for cleaning or janitorial services, furniture delivery or assembly, landscaping, home repair and similar services, where the charge for such services is \$3,000 or less, are independent contractors and not employees of the software platform unless there is clear and convincing evidence to the contrary. Utah Code § 34-53-101 .

The Remote Service Marketplace Platforms Act applies to remote-service contractors who provide tutoring, closed captioning, open captioning, subtitling, transcribing, translating, interpreting, and language assessment remotely through a digital application. The Act establishes a presumption that a remote-service contractor engaged in the above-described services is not an employee of a marketplace company if, under the agreement, all or substantially all of the work the remote-service contractor performs is on a per-job or per-transaction basis, the remote-service contractor receives payment on an hourly, per-job or per-transaction basis, and the marketplace company does not prescribe the hours the remote-service contractor must be available, the location where the remote-service contractor must be available to perform a remote service, or restrict the remote-service contractor from engaging in another occupation or business. Utah Code § 34-53a-101 et seq.

Law stated - 30 April 2021

Contracts

Must an employment contract be in writing?

No, an employment agreement need not be in writing unless, according to its terms, the contract is not to be performed within one year of the agreement being made (Utah Code §25-5-4(1)).

Employee handbooks or personnel policies may constitute an implied employment contract, absent a clear and conspicuous disclaimer stating that the handbook and policies do not establish and are not to be implied to create a contract. Johnson v. Morton Thiokol, Inc. , 818 P.2d 997 (Utah 1991).

Law stated - 30 April 2021

Are any terms implied into employment contracts?

Every contract contains an implied covenant of good faith and fair dealing which applies to both employer and employee Brehany v. Nordstrom, Inc. , 812 P.2d 49 (Utah 1991).

Law stated - 30 April 2021

Are mandatory arbitration agreements enforceable?

Under the Utah Arbitration Act, a written agreement to arbitrate an existing or future controversy arising between the parties to an agreement is “valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract” (Utah Code § 78B-11-107(1)). The policy of the law is to “interpret contracts in favor of arbitration, in keeping with our policy of encouraging extrajudicial resolution of disputes when the parties have not agreed to litigate.” Reed v. Davis County Sch. Dist. , 892 P.2d 1063, 1064 (Utah App.1995). Mandatory arbitration agreements have been ruled enforceable. See Zions Mgmt. Servs. v. Record , 305 P.3d 1062 (Utah 2013).



Law stated - 30 April 2021

How can employers make changes to existing employment agreements?

Oral modifications of an existing contractual agreement are permissible (e.g., *Kraatz v. Heritage Imports*, 71 P.3d 188 (Utah Ct. App. 2003)), but best practice would be to make contractual changes in writing.

Law stated - 30 April 2021

HIRING

Advertising

What are the requirements relating to advertising open positions?

Unless based on a bona fide occupational qualification, or required by and given to an agency of government for a security reason, an employer, employment agency, or labor organization may not do the following if the statement, advertisement, publication, form, or inquiry limits, specifies or discriminates on the basis of race, color, religion, sex, pregnancy, childbirth, pregnancy-related conditions, national origin, age, disability, sexual orientation, or gender identity:

- print, circulate, or cause to be printed or circulated a statement, advertisement, or publication;
- use a form of application for employment or membership; or
- make any inquiry in connection with prospective employment or membership.

If a private sector employer creates a voluntary veterans employment preference policy, it must be publicly posted at the place of employment or online if the employer has a website or uses the internet to advertise employment opportunities (Utah Code § 34-50-103).

Law stated - 17 May 2022

Background checks

(a) Criminal records and arrests

Utah law does not restrict a private employer's use of criminal history records for both arrests and convictions. Utah Code § 53-10-108 . A cause of action may not be brought against an employer for negligently hiring an employee based solely on evidence that the employee has been previously convicted. Utah Code § 78B-4-518.

However, an employer may still be liable if hiring of the employee rises to the level of willful misconduct or gross negligence. Id . Additionally, employers in the financial sector (or any employer hiring an employee to handle funds) will still be liable for hiring employees who have previously been convicted of fraud or other offenses related to the mishandling of funds. Id .

Law stated - 17 May 2022

(b) Medical history

Utah employers cannot, in connection with hiring, promotion, retention, or other related decisions, access or otherwise take into consideration private genetic information about an individual. An employer may seek an order compelling the

disclosure of private genetic information in connection with an employment-related judicial or administrative proceeding in which the individual has placed his or her health at issue, or an employment-related decision in which the employer has a reasonable basis to believe that the individual's health condition poses a real and unjustifiable safety risk requiring the change or denial of an assignment. Utah Code §§ 34A-11-102 ; 26-45-103 .

It is unlawful for an employer to charge an applicant or employee a medical fee for a physical examination. If an employer conditions employment on a physical examination, the employer must pay all examination costs. Utah Code § 34-33-1.

Law stated - 17 May 2022

(c) Drug screening

Utah law protects employers from liability related to testing for drugs and alcohol if the employer complies with the Utah Code Chapter on Drug and Alcohol Testing. Utah Code § 34-38-3 . Employers may test employees or prospective employees as a condition of hiring or continued employment. However, employers and management must submit to the testing on a periodic basis.

Testing must be carried out pursuant to the employer's written testing policy, which must be distributed to employees and made available for review by prospective employees. Permissible reasons for testing include:

- investigation of possible individual employee impairment;
- investigation of workplace accidents or incidents of workplace theft;
- maintenance of safety for employees or the general public; or
- maintenance of productivity, quality of products or services, or security of property or information. Utah Code § 34-38-7.

Testing must occur during or immediately after the regular work period for current employees and will be deemed work time for pay and benefits purposes. The employer must pay all costs of testing, including the cost of transportation if testing is conducted at a place other than the workplace (Utah Code § 34-38-5).

An employer can take adverse action against an applicant or employee if the employee or applicant refuses to provide a sample, or produces a failed test that is confirmed and indicates a violation of the employer's written policy. Utah Code § 34-38-8 .

Law stated - 17 May 2022

(d) Credit checks

Utah has no law restricting how employers can use credit reports.

Law stated - 17 May 2022

(e) Immigration status

Utah requires employers with 150 or more employees to verify the employment eligibility of employees through E-Verify or another status verification system (Utah Code § 13-47-201).

Law stated - 17 May 2022

(f) Social media

Utah's Internet Employment Privacy Act (Utah Code § 34-48-101 et seq.) prohibits employers, with limited exceptions, from requesting an employee or an applicant for employment to disclose a username and password, or password that allows access to the individual's personal online accounts. It also prohibits employers from taking adverse action, failing to hire, or otherwise penalizing an employee or applicant for failure to disclose usernames or passwords for personal online accounts.

Exceptions under which an employer may request or require usernames or passwords include:

- when accessing an electronic device or account provided by the employer;
- when disciplining or discharging an employee for transferring the employer's proprietary or confidential data to an employee's personal online account without authorization; and
- when conducting an investigation based on specific information about activity on the employee's personal online account that may violate applicable laws or policies against work-related misconduct, or about an unauthorized transfer of the employer's proprietary information to an employee's personal online account.

Employers are not restricted from viewing, accessing, or using publicly available information. Employers are not prohibited from complying with a duty to screen employees and applicants before hiring or monitoring and retaining employee communications under applicable law.

The law provides for a private right of action, but caps damages at \$500.

Law stated - 17 May 2022

(g) Other

None.

Law stated - 17 May 2022

WAGE AND HOUR

Pay

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

Utah Code, Title 34 Labor, Chapter 28 Payment of Wages, as well as Rule R610 Labor Commission, Antidiscrimination and Labor, Labor, Utah Administrative Code.

Law stated - 17 May 2022

What is the minimum hourly wage?

As of January 1, 2016 Utah's minimum wage is \$7.25 per hour. Employees receiving tips of at least \$30.00 per month may be paid a cash wage of \$2.13 per hour, if the total of the cash wage and tips is at least \$7.25 per hour. Minors (under 18 years) may be paid \$4.25 per hour as a training wage for the first 90 days of employment (R610, Utah Admin. Code).

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

When an employee is terminated by the employer, all wages are due immediately and are payable within 24 hours of termination. The 24-hour requirement is met if the employer:

- mails the wages to the employee with a postmark dated no more than one day after the date of termination;
- hand delivers the wages to the employee; or
- initiates a direct deposit of the wages into the employee's account within 24 hours of termination.

Failure to pay wages due within 24 hours of a written demand will result in the employee continuing to earn wages (at the same rate as when terminated) until paid, or for 60 days, whichever comes first.

When an employee quits or resigns employment and has no written contract for a definite period, all wages must be paid on the next regular payday. Utah Code § 34-28-5 .

Generally, deductions from wages are lawful when:

- the employer is required or authorized to do so by state or federal law (e.g., taxes, social security, etc.), or pursuant to a court order;
- the employee expressly authorizes the deduction in writing;
- the employer presents evidence that, in the opinion of a hearing officer or administrative law judge, would warrant an offset; and
- contributions under a benefits contract or plan established by the employer are required.

Pursuant to R.610-3-18, Utah Admin. Code, sums may also be deducted from wages as follows:

- For repayment to the employer of advances or loans, provided that:
 - the advance or loan occurred while the employee was in the employ of the employer; and
 - the employee's receipt of the advance or loan is evidenced by the employee's written acknowledgment.
- For amounts as a result of loss or damage occurring from the criminal conduct of the employee against the property of the employer, provided that:
 - the employee has been adjudged guilty by a judicial proceeding of the specified crime committed against the employer's property;
 - the crime occurred during the employment relationship or out of the employment relationship;
 - the employer's property cannot or has not been reunited with the employer; or
 - the employee willfully and through his or her own admission did in fact destroy company property. An offset against earned wages may be allowed at the hearing officer's discretion.
- For sums resulting from cash shortages, provided that:
 - the employee gives written acknowledgment on beginning employment that he or she is responsible for shortages;
 - at the beginning of his or her work period, the employee is checked in or verified on the register or with the cash amount by the employer in the employee's presence and gives written acknowledgment of the verification;
 - at the end of the work period, the employee is checked out or verified on the register or with the cash amount by the employer in the employee's presence and gives written acknowledgment of the verification; and

- the employee is the sole and absolute user and has sole access to the register or cash amount from the time checked in under Sub-section 2 until the time checked out under Sub-section 3.
- For the purchase of goods, tools, equipment, or other items required for the employment of a person, provided that:
 - the employee's purchase and receipt of the items is evidenced by a written acknowledgment;
 - the employee has actual or constructive possession of the goods or items; and
 - the employer repurchases the items from the employee at the employee's option on termination of employment at a fair and reasonable price.
- For payment for goods, tools, equipment, or other items furnished and assigned to the employee by the employer, provided that:
 - the item was assigned during the employee's employment;
 - the employee gave written acknowledgment of receipt of the item; and
 - the item was not returned to the employer on termination.

If a deduction from wages is made, the employer must, on each regular payday, furnish the employee with a statement showing the total amount of each deduction.

Law stated - 17 May 2022

Hours and overtime

What are the requirements for meal and rest breaks?

Utah does not require that employers provide meal or rest breaks to adult employees. If an employer chooses to provide a meal period to employees aged 18 or older, it will not be considered paid time if the meal period is 30 minutes or longer and the employee is completely relieved from duty. If short rest breaks are provided, they are generally considered paid time.

Minors are entitled to a meal period of at least 30 minutes within the first five hours of their workday. The meal period must be paid if the minor is not relieved of all duties. Minors are also entitled to a 10-minute break during every four-hour period, with the break scheduled so that the minor is not required to work over three hours without such a break (Utah Admin. Code R.610-1-12; R.610-2-3).

Law stated - 17 May 2022

What are the maximum hour rules?

Employers can generally require employees to work any length of day and can discipline or terminate employees who do not perform duties or hours as assigned.

A minor under 16 is not to be employed or permitted to work during school hours, except as authorized by proper school authorities. In addition, a minor under 16 is not permitted to work:

- before or after school in excess of four hours a day;
- before 5:00a.m. or after 9:30p.m., unless the next day is not a school day;
- in excess of eight hours in any 24-hour period; or
- more than 40 hours in any week. Utah Code § 34-23-202.

For overtime purposes, Utah does not require overtime for employees of private employers, except to the extent that it involves employment on public works, which requires pay at one-and-a-half times an employee's regular rate of pay for any time worked over 40 hours in a week. Utah Code § 34-30-8 .

Law stated - 17 May 2022

How should overtime be calculated?

Utah has no law governing overtime for employees of private employers, except to the extent that it involves employment on public works, which requires one-and-a-half times an employee's regular rate of pay for any time worked over 40 hours in a week. Non-exempt employees must be paid one-and-a-half times of their regular rate of pay for any time worked over 40 hours in the employer's seven-day workweek. Utah Code § 34-30-8 . Otherwise, employers must follow the federal Fair Labor Standards Act, as applicable.

Law stated - 17 May 2022

What exemptions are there from overtime?

Utah has no state law governing overtime, so any overtime obligations and exemptions flow from federal law under the Fair Labor Standards Act.

Law stated - 17 May 2022

Record keeping

What payroll and payment records must be maintained?

Employers must keep a true and accurate record of time worked and wages paid each pay period to each employee employed on an hourly or daily basis for at least one year after the entry of the record. Utah Code § 34-28-10 . Federal payroll record keeping requirements exist under the Fair Labor Standards Act.

Law stated - 17 May 2022

DISCRIMINATION, HARASSMENT AND FAMILY LEAVE

What is the state law in relation to:

Protected categories

(a) Age?

An employer with 15 or more employees cannot refuse to hire, promote, discharge, demote, terminate, retaliate against, harass, or discriminate in matters of compensation or in the terms, privileges, and conditions of employment against a person otherwise qualified, because of race; color; sex; pregnancy, childbirth, or pregnancy-related conditions; age (40 years or older); religion; national origin; disability; sexual orientation; or gender identity. Utah Code § 34A-5-106 . A person is considered "otherwise qualified," if that person meets the following requirements by an employer for any particular job, job classification, or position:

- education;
- training;
- ability, with or without reasonable accommodation;

- moral character;
- integrity;
- disposition to work;
- adherence to reasonable rules and regulations; and
- other job-related qualifications required by an employer

Law stated - 17 May 2022

(b) Race?

Protected category. Utah Code § 34A-5-106.

Law stated - 17 May 2022

(c) Disability?

Protected category. Utah Code § 34A-5-106.

Law stated - 17 May 2022

(d) Gender?

Protected category. Utah Code § 34A-5-106.

Law stated - 17 May 2022

(e) Sexual orientation?

Protected category. Utah Code § 34A-5-106.

Law stated - 17 May 2022

(f) Religion?

Protected category. Utah Code § 34A-5-106.

Law stated - 17 May 2022

(g) Medical?

Utah employers cannot, in connection with a hiring, promotion, retention, or other related decision, access or otherwise take into consideration private genetic information about an individual. An employer can seek an order compelling the disclosure of private genetic information in connection with an employment-related judicial or administrative proceeding in which the individual has placed his or her health at issue, or an employment-related decision in which the employer has a reasonable basis to believe that the individual's health condition poses a real and unjustifiable safety risk requiring the change or denial of an assignment. Utah Code §§ 34A-11-102 ; 26-45-103 .

It is unlawful for an employer to charge an applicant or employee a medical fee for a physical examination. If an

employer conditions employment on a physical examination, the employer must pay all examination costs. Utah Code § 34-33-1 .

Law stated - 17 May 2022

(h) Other?

Additional protected classes under Utah law include color, national origin, pregnancy, childbirth, pregnancy-related conditions, and gender identity (Utah Code §34A-5-106).

Law stated - 17 May 2022

Harassment

What is the state law in relation to harassment?

Sexual harassment, as well as harassment based on another protected class, is prohibited under Utah law. As with any discrimination claim for an alleged violation of the Utah Anti-discrimination Act, employee or applicant must file an administrative charge with the Utah Labor Commission, which conducts an investigation and determines if there is reasonable cause to believe discrimination has occurred. If either party is dissatisfied with the outcome of the investigation, it may appeal and obtain a trial de novo before an administrative law judge. The ALJ's decision may be appealed to the Utah Court of Appeals.

Law stated - 17 May 2022

Family and medical leave

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

Utah has no state family and medical leave law.

Law stated - 17 May 2022

PRIVACY IN THE WORKPLACE

Privacy and monitoring

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

Utah law mirrors the federal Electronic Communications Privacy Act. Monitoring phone calls, video or audio recordings requires on-party consent (Utah Code §77-23a-1 et seq.).

Law stated - 17 May 2022

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

Utah's Internet Employment Privacy Act (Utah Code §34-48-101 et seq.) prohibits employers, with limited exceptions, from requesting an employee or an applicant for employment to disclose a username and password, or password that allows access to the individual's personal online account. It also prohibits employers from taking adverse action, failing

to hire, or otherwise penalizing an employee or applicant for failure to disclose usernames or passwords for personal online accounts.

Exceptions under which an employer can request or require usernames or passwords include:

- when accessing an electronic device or account provided by the employer;
- when disciplining or discharging an employee for transferring the employer's proprietary or confidential data to an employee's personal online account without authorization; and
- when conducting an investigation based on specific information about activity on the employee's personal online account that may violate applicable laws or policies against work-related misconduct, or about an unauthorized transfer of the employer's proprietary information to an employee's personal online account.

Employers are not restricted from viewing, accessing, or using publicly available information. Employers are not prohibited from complying with a duty to screen employees and applicants before hiring or monitoring and retaining employee communications under applicable law.

The law provides for a private right of action, but caps damages at \$500.

Law stated - 17 May 2022

Bring your own device

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

Utah law does not address the issue of bring your own device.

Law stated - 17 May 2022

Off-duty

To what extent can employers regulate off-duty conduct?

Utah prohibits infringements "upon the freedom of expressive association or the free exercise of religion protected by the First Amendment of the United States Constitution and Article I, Sections 1, 4, and 15 of the Utah Constitution" (Utah Code §34A-5-111).

The act goes on to say that:

Law stated - 17 May 2022

Gun rights

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

Under Utah law, employers may not prohibit employees from transporting or storing a firearm in a motor vehicle parked in the employer's lot if the individual is legally permitted to possess the firearm, the firearm is locked securely in a motor vehicle or in a locked container attached to the motor vehicle while the motor vehicle is not occupied, and the firearm is not in plain view from outside the motor vehicle. An employer may designate alternate parking for an individual who wishes to store a firearm in his or her vehicle if no additional cost is imposed on the individual and the location is legal and safe for parking. Utah Code § 34-45-103.

TRADE SECRETS AND RESTRICTIVE COVENANTS**Intellectual property****Who owns IP rights created by employees during the course of their employment?**

Utah's Employment Inventions Act permits an employer to require its employees to sign an agreement that requires the employee to assign or license to the employer any or all of the rights and intellectual property in or to an employment invention. Employment or continued employment is sufficient consideration to support such an agreement. However, an employer cannot require an employee to agree to assign or license to the employer any right or intellectual property in or to an invention that was created by the employee entirely on his or her own time and is not an employment invention. Utah Code §34-39-3 .

An "employment invention" means any invention or part thereof conceived, developed, reduced to practice, or created by an employee which is:

- conceived, developed, reduced to practice, or created by the employee:
 - within the scope of his or her employment;
 - on his or her employer's time; or
 - with the aid, assistance, or use of any of his or her employer's property, equipment, facilities, supplies, resources, or intellectual property;
- the result of any work, services, or duties performed by an employee for his or her employer;
- related to the industry or trade of the employer; or
- related to the current or demonstrably anticipated business, research, or development of the employer. Utah Code §34-39-2.

Law stated - 17 May 2022

Restrictive covenants**What types of restrictive covenants are recognized and enforceable?**

Utah's statute governing the enforceability or reasonableness of restrictive covenants is found under Utah Code § 34-51-101 et seq. This statute went into effect in 2016. The statute provides that on or after May 10, 2016, an employer and an employee may not enter into a post-employment restrictive covenant for a period of more than one year from the day on which the employee is no longer employed by the employer. There are exceptions for covenants not to compete entered into in connection with the sale of a business and in connection with severance agreements.

The requirements imposed under common law must also still be satisfied. To be valid and enforceable, covenants not to compete must be supported by consideration, there must be no bad faith in negotiation of the contract and the covenant must be necessary to protect the goodwill of the business and be reasonable in its restrictions as to time and area. *System Concepts, Inc. v. Dixon* , 669 P.2d 421 (Utah 1983); *Robbins v. Finlay* , 645 P.2d 623 (Utah 1982).

Law stated - 17 May 2022

Non-compete

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

If the post-employment restrictive covenant is between a broadcasting company and a broadcasting exempt employee, the covenant is enforceable for no longer than the earlier of:

- one year after the day on which the broadcasting employee is no longer employed by the broadcasting company; or
- the day on which the original term of the employment contract containing the post-employment restrictive covenant ends (Utah Code § 34-51-201(2)(a)-(b)).

Law stated - 17 May 2022

LABOR RELATIONS

Right to work

Is the state a “right to work” state?

Yes, Utah is a “right to work” state (Utah Code §34-34-1 to 17).

Law stated - 17 May 2022

Unions and layoffs

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

Utah has low unionization in its workforce, estimated between 3 per cent and 4 per cent. Areas of unionization are primarily:

- public and state employees;
- manufacturing; and
- construction.

Law stated - 17 May 2022

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

Utah has no law regarding plant closures or mass layoffs for private employers.

Law stated - 17 May 2022

DISCIPLINE AND TERMINATION

State procedures

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

Utah has no law governing private employers with regard to discipline and grievance procedures.

Law stated - 17 May 2022

At-will or notice

At-will status and/or notice period?

Utah is an at-will state, so all employees who are employed for an indefinite period are presumed to be employees at will.

Law stated - 17 May 2022

What restrictions apply to the above?

At-will status may be modified by an express or implied contract. Employee handbooks, personnel policies, oral statements and a course of conduct may modify the at-will relationship or otherwise create contractual liability for an employer. *Wood v. Utah Farm Bureau*, 19 P.3d 392 (Utah Ct. App. 2001). An employer's right to discharge an employee at-will is also limited by Utah public policy, as a wrongful termination claim may exist should a discharge violate public policy based on the Utah Constitution, statutes, or common law. *Peterson v. Browning*, 832 P.2d 1280 (Utah 1992).

Law stated - 17 May 2022

Final paychecks

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

When an employee is terminated by the employer, all wages are due immediately, and are payable within 24 hours of termination. The 24-hour requirement is met if the employer:

- mails the wages to the employee with a postmark dated no more than one day after the date of termination;
- hand delivers the wages to the employee; or
- initiates a direct deposit of the wages into the employee's account within 24 hours of the termination.

Failure to pay wages due within 24 hours of written demand results in the employee continuing to earn wages (at the same rate as when terminated) until paid, or for 60 days, whichever comes first.

When an employee quits or resigns employment and has no written contract for a definite period, all wages must be paid on the next regular payday.

Law stated - 17 May 2022

Jurisdictions

	Canada - Quebec	Stikeman Elliott LLP
	USA - California	DLA Piper
	USA - Colorado	Holland & Hart LLP
	USA - District of Columbia	Shook Hardy & Bacon LLP
	USA - Georgia	Ogletree Deakins
	USA - Indiana	Ogletree Deakins
	USA - Iowa	Nyemaster Goode PC
	USA - Maine	Pierce Atwood LLP
	USA - Maryland	Shawe Rosenthal LLP
	USA - Massachusetts	Morgan, Brown & Joy LLP
	USA - Michigan	Nemeth Law
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	USA - Nebraska	Rembolt Ludtke LLP
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