

UTAH

I. AT-WILL EMPLOYMENT

A. Statute

There are no statutes relating to at-will status in private employment.

B. Case law

Utah is presumptively an at-will state. *Hansen v. Am. Online, Inc.*, 2004 UT 62, ¶ 7, 96 P.3d 950; *Burton v. Exam Ctr.*, 2000 UT 18, ¶ 6, 994 P.2d 1261; *Fox v. MCI Communications Corp.*, 931 P.2d 857, 859 (Utah 1997). The at-will presumption is an evidentiary rebuttable presumption, not a rule of contract construction. *Glacier Land Co. v. Claudia Klawe & Assoc., LLC*, 2006 UT App 516, ¶¶ 16-18, 154 P.3d 852; *Barela v. C.R. England & Sons, Inc.*, 197 F.3d 1313, 1315 (10th Cir. 1999).

II. EXCEPTIONS TO AT-WILL EMPLOYMENT

The presumption of at-will status may be overcome by establishing one of three elements: (i) an express or implied agreement existed that prohibited an employer from terminating an employee without cause or without satisfying other agreed-upon conditions; (ii) a statute or regulation restricts the employer's right to terminate; or (iii) the termination "constitutes a violation of a clear and substantial public policy." *Ryan v. Dan's Food Stores, Inc.*, 972 P.2d 395, 400 (Utah 1998) (internal quotation omitted); *Fox*, 931 P.2d at 859 (citations omitted).

A. Implied Contracts

"A[n] employee may overcome [the at-will] presumption by showing that the parties created an implied-in-fact contract, modifying the employee's at-will status." *Hodgson v. Bunzl Utah, Inc.*, 844 P.2d 331, 333 (Utah 1992). "[A]n employee may use an employer's written policies, bulletins, or handbooks as evidence of an implied-in-fact contract." *Id.* Further, "evidence of conduct and oral statements may establish an implied-in-fact contract even without the support of written policies, bulletins, or handbooks." *Id.* at 334.

"[F]or an implied-in-fact contract term to exist, it must meet the requirements for an offer of a unilateral contract." *Johnson v. Morton Thiokol, Inc.*, 818 P.2d 997, 1002 (Utah 1991). Neither mutuality of obligation nor independent consideration is required to enforce implied-in-fact promises by an

employer. *Berube v. Fashion Ctr., Ltd.*, 771 P.2d 1033, 1044–45 (Utah 1989). The Employee has the burden of establishing the existence of an implied employment contract. *Tomlinson v. NCR Corp.*, 2014 UT 55 ¶ 11, 345 P.3d 523.

1. Employee Handbooks/Personnel Materials

An employee handbook may be used as evidence of the existence of an implied-in-fact contract between an employer and an employee. *Hodgson v. Bunzl Utah, Inc.*, 844 P.2d 331, 333 (Utah 1992). An employee handbook may also unilaterally modify or supersede any express or implied contracts that previously existed between an employer and an employee, and may return the employee to at-will status. *Ryan v. Dan's Food Stores, Inc.*, 972 P.2d 395, 401–02 (Utah 1998); *see also Calvert v. Smith's Food & Drug Centers, Inc.*, 2007 WL 4207198, at *7 (D. Utah 2007) (“The Employee Handbook is quite clear in that ‘it does not create a contract of employment nor is it a guarantee of employment for any specific period of time.’”). However, the employee must be aware of any changes to the employee handbook in order for such changes to modify the existing employment contract. *Johnson v. Kimberly Clark Worldwide*, 86 F.Supp.2d 1119, 1122 (D. Utah 2000) (applying Utah law).

A clear and conspicuous disclaimer in an employee handbook negates an employee’s contention that the employment relationship is anything other than at will. *Tomlinson*, 2014 UT 55 ¶ 25, 345 P.3d 523.

A contract provision guaranteeing that certain procedures will be followed, but reserving the right to discharge for any reason, only entitles the employee to challenge a termination under the handbook’s procedures, not under any right stating that the employee can only be fired for good cause. *Johnson v. Morton-Thiokol, Inc.*, 818 P.2d 997, 1003 (Utah 1991); *see also Acey v. Litton Sys., Inc.*, 2002 UT App 142 (unpublished) (employer’s two-year probation period for employees testing positively for drugs did not prevent employer from terminating employee during probation period).

2. Provisions Regarding Fair Treatment

See discussion above.

3. Disclaimers

“Clear and conspicuous” disclaimers of contractual liability are enforceable in Utah. *Hodgson v. Bunzl Utah, Inc.*, 844 P.2d 331, 334 (Utah 1992); *Johnson v. Morton-Thiokol, Inc.*, 818 P.2d 997, 1003 (Utah 1991). The “placement of the disclaimer [in the handbook must be] sufficiently prominent to place a reasonable employee on notice that the employer [is] disclaiming any contractual relationship.” *Tomlinson*, 2014 UT 55, ¶ 28. The language of a disclaimer “need not employ the magic words ‘at-will’ if it otherwise clearly conveys the employer’s intention not to enter into a contract or to create mandatory procedures for employment terminations.” *Id.* at ¶ 30. It is recommended that an employee sign an acknowledgment sheet in the personnel manual and/or separate document expressly acknowledging at-will status. *See Ryan v. Dan's Food Stores, Inc.*, 972 P.2d 395, 401–02 (Utah 1998) (employee’s receipt of an employee handbook stating at-will status, and written acknowledgement of such status, supersedes any alleged implied contract derived from prior oral representations).

4. Implied Covenants of Good Faith and Fair Dealing

Utah recognizes the implied covenant of good faith and fair dealing in all contracts, including employment contracts. Courts have repeatedly stated, however, that the implied covenant “cannot be construed to change an indefinite-term, at-will employment contract into a contract that requires an employer to have good cause to justify a discharge.” *Brehany v. Nordstrom, Inc.*, 812 P.2d 49, 55 (Utah 1991) (citations omitted). *Hodges v. Gibson Products Co.*, 811 P.2d 151, 165 (Utah 1991); *Vander Veur v. Groove Ent. Techs.*, 2019 UT 64, ¶ 10, 452 P.3d 1173, 1177.

The “breach of the implied covenant of good faith and fair dealing may be asserted for the limited purpose of protecting from opportunistic interference an employee’s justified expectations in receiving the fruits of a compensation agreement attended to the at-will employment relationship after that relationship has been terminated.” *Veur v. Groove Entm’t Techs.*, 2018 UT App 148, ¶ 26, *cert. granted*, 432 P.3d 1230 (2018). To successfully assert such a claim, “the employee must demonstrate that (1) his or her employment was terminated in bad faith to deprive him or her of benefits under a compensation agreement and (2) he or she does, in fact, have a justified expectation for receiving the benefits to which entitlement is claimed.” *Id.*

B. Public Policy Exceptions

1. General

A cause of action in tort is available to employees who are terminated in violation of a “clear and substantial public policy.” *Ray v. Wal-Mart Stores, Inc.*, 2015 UT 83, ¶ 12, 359 P.3d 614; *Hansen v. Am. Online, Inc.*, 2004 UT 62, ¶ 7, 96 P.3d 950; *Ryan v. Dan’s Food Stores, Inc.*, 972 P.2d 395, 400 (Utah 1998); *Fox v. MCI Communications Corp.*, 931 P.2d 857, 859 (Utah 1997); *Peterson v. Browning*, 832 P.2d 1280, 1284-85 (Utah 1992); *Hodges v. Gibson Prod. Co.*, 811 P.2d 151 (Utah 1991). *Barela v. C.R. England & Sons, Inc.*, 197 F.3d 1313, 1317 (10th Cir. 1999) ([I]nternal reporting alone is sufficient to bring a public policy into play when an employer’s violation of the policy at issue is detrimental to the public interest).

To prevail on a claim of wrongful termination on the ground that it violated public policy, an employee must first establish a prima facie case by showing (1) that his employer terminated him; (2) that a clear and substantial public policy existed; (3) that the employee’s conduct brought the policy into play; and (4) that the discharge and the conduct bringing the public policy into play was a cause of the firing. *Medina v. Jeff Dumas Concrete Constr. LLC*, 2020 UT App 166, ¶ 14, 479 P.3d 1116. Upon such a showing, the burden then shifts to the employer to articulate and produce evidence of a legitimate reason for the termination. If faced with evidence of a legitimate reason for termination, the employee must prove by a preponderance of the evidence that engaging in the protected conduct was a substantial factor in the employer’s motivation to terminate the employee. *Id.* Under the substantial factor test, the employee must show that the protected conduct was an important factor motivating the employee’s discharge but need not establish that the employer discharged the employee solely because of the protected activity. *Id.*

The scope of public policy for employment purposes is “far narrower” than the typical notion of public policy. *Ryan*, 972 P.2d at 405. Generally, the public policy must derive from express legislative or constitutional standards. *Hodges*, 811 P.2d at 165-166; *see also Hansen*, 96 P.3d at 953 (“We confer the

elevated status of a public policy on a right that we have deemed essential to our way of life, the architecture of the institutions of government, or the distribution of governmental power.”).

The Utah Supreme Court is “wary” of extending public policy protections because of the need for stability and predictability. However, in *Ryan*, it outlined four categories of public policies eligible for consideration under the exception:

- (i) refusing to commit an illegal or wrongful act, such as refusing to violate the antitrust laws;
- (ii) performing a public obligation such as accepting jury duty;
- (iii) exercising a legal right or privilege such as filing a workers’ compensation claim; or
- (iv) reporting to a public authority criminal activity of the employer.

972 P.2d at 408 (citations omitted).

However, the “public policy” exception cannot be used to create a cause of action for age or sex discrimination against an employer with fewer than 15 employees because the Utah legislature has essentially defined the public policy in those areas by limiting statutory causes of actions to employers with more than 15 employees. See *Gottling v. P.R., Inc.*, 2002 UT 95, 61 P.3d 989 (gender); *Byers v. Creative Corner, Inc.*, 2002 UT 96, 57 P.3d 1064 (pregnancy); *Burton v. Exam Ctr.*, 2000 UT 18, 994 P.2d 1261 (age discrimination).

2. Exercising a Legal Right

Although exercising a legal right or privilege might trigger public policy protection, this is narrowly construed in Utah. The “analysis of whether the public policy exception applies to a particular legal right or privilege will frequently require a balancing of competing legitimate interests.” *Ray*, 2015 UT 83, ¶ 13. Utah courts consider three factors: “(1) whether the policy at issue is reflected in authoritative sources of state public policy, (2) whether the policy affects the public generally as opposed to the private interests of the employee and the employer, and (3) whether countervailing policies outweigh the policy at issue.” *Id.*, ¶ 14. These factors are conjunctive and an employee must demonstrate that each factor supports recognizing an exception to at-will employment. *Id.*

For example, in *Hansen v. Am. Online, Inc.*, 2004 UT 62, 96 P.3d 950, employees were fired for violating a strict no-gun policy by having guns (lawfully) in the trunk of their car in the parking lot. The Utah Supreme Court held that the state constitutional right to bear arms was not a public policy so clear and substantial as to supersede an employer’s attempt to restrict weapons in the workplace through a workplace violence prevention policy. See also *Rackley v. Fairview Care Ctrs., Inc.*, 970 P.2d 277 (Utah Ct. App. 1998) (no violation of public policy to terminate nursing home employee who informed patient of V.A. check’s arrival contrary to instructions of patient’s daughter); *Pang v. Int’l Doc. Servs.*, 2015 UT 63, ¶ 31, 356 P.3d 1190 (no violation of public policy to terminate in-house attorney for complying with Rule 1.13 of the Utah Rules of Professional Conduct). But see *Ray*, 2015 UT 83, ¶ 2 (recognizing that the right of self-defense is a public policy exception to the at-will employment doctrine that provides the basis for a wrongful discharge action).

Terminating an employee for exercising rights under the Workers' Compensation Act is a violation of public policy. *Touchard v. La-Z-Boy, Inc.*, 2006 UT 71, 148 P.3d 945; *Medina v. Jeff Dumas Concrete Constr. LLC*, 2020 UT App 166, ¶ 14, 479 P.3d 1116. However, Utah does not recognize a cause of action for retaliatory harassment (short of actual termination) for exercising workers' compensation rights. *Touchard*, 2006 UT 71.

3. Refusing to Violate the Law

In general, refusal to violate the law is protected as a public policy exception. See *Ryan v. Dan's Food Stores, Inc.*, 972 P.2d 395, 409 (Utah 1998) (termination for questioning or refusing to fill certain types of prescriptions would implicate public policy); *Barela v. C.R. England & Sons, Inc.*, 197 F.3d 1313 (10th Cir. 1999) (applying Utah law, holding that promises of time off with pay, which could only be attained if truck driver employees exceeded driving time maximums, violated public policy); *Peterson v. Browning*, 832 P.2d 1280 (Utah 1992) (protecting employee from termination for refusal to falsify state and federal documents).

Public employees are protected from any adverse action by their employer for refusing to carry out actions that the employee reasonably believes violates the law. Utah Code § 67-21-3(3).

4. Exposing Illegal Activity (Whistleblowers)

It is unclear to what extent whistleblowing is protected by the public policy exception. However, reporting illegal activity is not sufficient to implicate public policy if the employer, rather than the general public, is the principal victim. See *Pang*, 2015 UT 63 (termination for reporting compliance requirement to employer did not implicate public policy concerns because reporting requirements were for the benefit of employer and not the general public); *Fox v. MCI Communications Corp.*, 931 P.2d 857 (Utah 1997) (termination for reporting suspected embezzlement to company management was not contrary to public policy because, although conduct might be in violation of the state's criminal statutes, the principal victim was the employer, not the public).

Public employees in Utah may not be discharged for reporting the waste of public funds, property, or manpower, or any other suspected violation of law. Utah Code § 67-21-3(1). It is important to note, however, that successful arguments have been made that this statute does not apply if the report of an alleged violation was personally motivated, and if reasonable chain of command requirements were not followed. See *Guenon v. Midvale City*, 230 P.3d 1032, cert. denied, 238 P.3d 443 (Utah 2010).

III. CONSTRUCTIVE DISCHARGE

An involuntary or coerced resignation is equivalent to a discharge. An employee must show that the employer's conduct "produced working conditions that a reasonable person would view as intolerable." *Sheikh v. Dep't of Pub. Safety*, 904 P.2d 1103, 1107 (Utah Ct. App. 1995).

In evaluating a claim of constructive discharge, courts consider that "part of an employee's obligation to be reasonable is an obligation not to assume the worst, and not to jump to conclusions too fast." *Id.* at 1107. For example, quitting because of a single late paycheck was not "good cause" in the analogous context of unemployment benefits, as the "[p]etitioner never met with the employer on

a one-on-one basis to discuss her late paycheck.” *Juback v. Dep’t of Workforce Serv.*, 2005 UT App 421, ¶¶ 3-5 (unpublished).

A resignation under threat of almost certain termination can constitute a discharge under state law. *Dep’t of Air Force v. Dep’t of Employment Sec*, 786 P.2d 1361, 1365 (Utah Ct. App. 1990).

IV. WRITTEN AGREEMENTS

A. Standard “For Cause” Termination

Utah has noted that the term “just cause” connotes “fair and honest cause or reason, regulated by good faith on the part of the party exercising the power.” *Uinta Basin Medical Center v. Hardy*, 2008 UT 15, ¶ 12, 179 P.3d 786 (quotations and citations omitted). “A just cause reason for termination is not trivial, arbitrary or capricious, unrelated to business needs or goals, or pretextual.” *Id.* The definition of just cause is broad and allows for termination for reasons including misconduct, poor performance, and other legitimate economic reasons. *Id.* at ¶ 16.

To establish just cause, an employer must “justify termination with an objective good faith reason supported by facts reasonably believed to be true by the employer.” *Uinta Basin Medical Center v. Hardy*, 2005 UT App 92, ¶ 22.

Employers can narrow the scope of permissible bases for termination by contract thereby narrowing the ordinary meaning of the term “just cause”. *Beckman v. Cybertary Franchising LLC*, 2018 UT App 47, ¶ 53, 424 P.3d 1016 (limiting the scope of permissible bases for termination to those specifically identified in the employment agreement).

B. Status of Arbitration Clauses

Arbitration is a matter of contract in Utah, and a party cannot be required to submit any dispute to arbitration that he has not agreed to submit. *Cent. Fla. Inv., Inc. v. Parkwest Assocs.*, 2002 UT 3, ¶ 10, 40 P.3d 599 (citation omitted). “Nevertheless, the law recognizes circumstances in which a party who never expressly consented to arbitrate a dispute may surrender his right to go to court.” *Bybee v. Abdulla*, 2008 UT 35, ¶ 9, 189 P.3d 40 (citations omitted). Additionally, the right to demand arbitration may be waived if the party “intended to disregard its right to arbitrate,” such as by filing affirmative motions for relief in a court proceeding, and such action resulted in prejudice to the opposing party. *Smile, Inc. v. Britesmile Mgmt., Inc.*, 2005 UT App 381, ¶¶ 21–30, 122 P.3d 654.

Utah recognizes the enforceability of arbitration clauses in employment agreements. *See Valez v. Robert J. Debry & Assocs. PC*, 2015 UT App 15, 343 P.3d 324; *Zions Management Services v. Record*, 2013 UT 36, 305 P.3d 1062.

V. ORAL AGREEMENTS

Subject to the statute of frauds, discussed below, employment agreements may be oral. *Sanderson v. First Sec. Leasing Co.*, 844 P.2d 303 (Utah 1992). “At-will employment is a bundle of different privileges, any or all of which an employer can surrender through an oral agreement.” *Id.* at 307. “In addition to a promise for a specified employment term or a for-cause requirement for

termination, an employer can, for example, agree to use a certain procedure for firing employees or promise not to fire employees for a certain reason, thereby modifying the employee's at-will status." *Id.*

"Oral statements and course of conduct may be used as evidence of an employer's intent to modify the at-will provision." *Wood v. Utah Farm Bureau Ins. Co.*, 2001 UT App 35, ¶ 14, 19 P.3d 392. "In order for conduct and oral statements to establish an implied-in-fact contract, such evidence must be strong enough to overcome...any inconsistent written policies and disclaimers." *Id.* (quoting *Hodgson v. Bunzl Utah, Inc.*, 844 P.2d 331, 334 (Utah 1992)).

In *Hodgson*, a manager stated in a pre-employment interview that the company followed "disciplinary procedures," and then later issued warnings to four employees. The plaintiff argued that this created an implied-in-fact contract and that she could be discharged only after receiving notice to improve her performance. The Utah Supreme Court held that despite the manager's comments, Bunzl's employees could reasonably rely "only on the discharge procedure[s] stated in the employee handbook." *Id.* at 335.

In *Francisconi v. Union Pac. R.R. Co.*, 2001 UT App 350, ¶ 5, 36 P.3d 999, an issue of fact existed as to whether a manager's statement, to an employee who was under suspicion, that "the first thing you can do to save your job is to fill out a statement," created an implied-in-fact employment contract that prevented the employee from being fired after admitting fault in the statement. *Id.*

A. Promissory Estoppel

Utah recognizes promissory estoppel in the context of employment claims. *Anderson v. Larry H. Miller Communications Corp.*, 2012 UT App 196, ¶ 20, 284 P.3d 674. To successfully state a claim in relation to promissory estoppel, the employee must have "acted with prudence and in reasonable reliance on a promise made" by the employer. *Id.*

B. Fraud

Fraudulent (oral) inducement into an employment contract is a recognized cause of action in Utah, but the plaintiff has a duty to mitigate and cannot recover on harm he could have avoided by use of reasonable effort. *Conder v. A. L. Williams & Associates*, 739 P.2d 634, 639 (Utah Ct. App. 1987).

C. Statute of Frauds

The Utah statute of frauds states that "every agreement that by its terms is not to be performed within one year from the making of the agreement..." is void. Utah Code § 25-5-4(1). The statute of frauds applies to employment agreements. *Orlob v. Wasatch Med. Mgmt.*, 2005 UT App 430, 124 P.3d 269 (governing commissions and a non-competition clause); *Pasquin v. Pasquin*, 1999 UT App 245, 988 P.2d 1 (regarding a lifetime employment contract).

VI. DEFAMATION

A. General Rule

1. Libel

To maintain a claim for defamation, a plaintiff must show: “[1] that defendants published statements concerning him, [2] that the statements were false, [3] defamatory, [4] not subject to any privilege, [5] that the statements were published with a requisite degree of fault, and [6] that their publication resulted in damage.” *West v. Thomson Newspapers*, 872 P.2d 999, 1007-8 (Utah 1994) (numbering added); *see also DeBry v. Godbe*, 1999 UT 111 ¶ 8, 992 P.2d 979.

2. Slander

In Utah, slander is defined as “any libel communicated by spoken words.” Utah Code § 45-2-2(2). The elements are thus the same as for libel (*see above*).

B. References

By statute, qualified immunity is conferred for employer references. “An employer who in good faith provides information about the job performance, professional conduct, or evaluation of a former employee to a prospective employer of that employee, at the request of the prospective employer of that employee, may not be held civilly liable for the disclosure or the consequences of providing the information.” Utah Code § 34-42-1(1). A rebuttable presumption of good faith exists, which may be overcome only by clear and convincing evidence that the employer disclosed the information with actual malice or with intent to mislead. Utah Code § 34-42-1(2-4).

C. Privileges

A plaintiff bears the burden of showing that allegedly defamatory statements are “not subject to any privilege[.]” *West v. Thomson Newspapers*, 872 P.2d 999, 1007 (Utah 1994). If a privilege exists, the plaintiff may show that it was abused.” *Brehany v. Nordstrom, Inc.*, 812 P.2d 49, 58 (Utah 1991).

Qualified privilege is an affirmative defense that must be raised in the defendant’s answer. The plaintiff does not have to plead abuse of privilege in her complaint. *Zoumadakis v. Uintah Basin Med. Ctr.*, 2005 UT App 325, ¶ 6, 122 P.3d 891.

The plaintiff can show abuse of the privilege by proving common law malice. Evidence of malice may include: (1) that the publisher made the statements with ill will; (2) that the statements were excessively published; or (3) that the publisher did not reasonably believe the statements. *Wayment v. Clear Channel Broad., Inc.*, 2005 UT 25, ¶ 53, 116 P.3d 271.

A conditional privilege extends “to the protection of the interests of third persons under proper circumstances. Where life, safety, well-being or other important interest is in jeopardy, one having information which could protect against the hazard, may have a conditional privilege to reveal information for such purpose, even though it be defamatory and may prove to be false.” *Berry v. Moench*, 331 P.2d 814, 817–18, (Utah 1958).

A related conditional privilege exists with respect to a publication “without malice, to a person interested therein, by one who is also interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent.” Utah Code § 45-2-3(3); *Brehany v. Nordstrom, Inc.*, 812 P.2d 49, 58 (Utah 1991). The protected interest may include a common business interest. *Lind v. Lynch*, 665 P.2d 1276, 1278 (Utah 1983). An additional privilege exists for statements made by parties or counsel during the course of judicial proceedings. *DeBry v. Godbe*, 1999 UT 111, 992 P.2d 979.

D. Other Defenses

If a defamatory statement was published in good faith due to a mistake or misinterpretation of the facts, and a full and fair retraction is made within three days of demand, recovery is limited to actual damages. Utah Code § 45-2-1.5(1).

1. Truth

Although substantial truth would vitiate a defamation claim, it is not an affirmative defense, because it is the plaintiff’s burden to show falsity.

2. No publication

Since publication is an element of defamation, the lack of publication would cause the plaintiff’s claim to fail.

3. Self-Publication

There are no appellate cases addressing this issue.

4. Invited Libel

There are no appellate cases addressing this issue. However, in our experience, some trial judges have suggested that invited or self-libel could be actionable if a reasonable person would have felt compelled to utter or repeat the statements.

5. Opinion

Although the ruling depended in part on the facts, the Utah Supreme Court has held that the state constitution protects expressions of opinion from liability for defamation. *West v. Thomson Newspapers*, 872 P.2d 999 (Utah 1994). In other circumstances, Utah would typically follow the common law rule, which would limit liability for statements of opinions to narrow circumstances.

6. Actual Harm to Reputation Recognized

Actual harm to reputation is not required for defamation per se in Utah.

E. Job References and Blacklisting Statutes

An employer who provides information in good faith regarding a former or current employee to a prospective employer may not be held civilly liable for such disclosure. Utah Code § 34-42-1. There is a rebuttable presumption that the employer acted in good faith in giving such information. The presumption can only be rebutted “upon showing by clear and convincing evidence that the employer disclosed the information with actual malice or with intent to mislead.” *Id.*

Blacklisting is arguably prohibited by Article XII § 19 of the Utah Constitution, which reads:

Each person in Utah is free to obtain and enjoy employment whenever possible, and a person or corporation, or their agent, servant, or employee may not maliciously interfere with any person from obtaining employment or enjoying employment already obtained from any other person or corporation.

However, Utah’s law prohibiting blacklisting, which was formerly located at Utah Code § 34-42-1, was repealed in 2013. Utah Courts have yet to decide whether Utah’s constitution provides for a private cause of action. *Harvey v. Ute Indian Tribe of the Uintah & Ouray Reservation*, 2017 UT 75, 416 P.3d 401.

F. Non-Disparagement Clauses

There are no Utah cases addressing non-disparagement clauses in the employment context. However, in general, non-disparagement clauses are considered “common contractual provisions” that are enforceable. *Patterson v. Knight*, 2017 UT App 22, ¶ 9, 391 P.3d 1075.

VII. EMOTIONAL DISTRESS CLAIMS

A. Intentional Infliction of Emotional Distress

The tort of intentional infliction of emotional distress is actionable against an employer, so long as the employee can show that the employer acted with intent. *Munteer v. Utah Power & Light Co.*, 823 P.2d 1055, 1058 (Utah 1991); *Hamilton v. Parkdale Care Ctr.*, 904 P.2d 1110, 1113 (Utah Ct. App. 1995). Claims for negligent infliction of emotional distress, which are addressed below, are preempted by the workers’ compensation statute.

Elements of an intentional infliction of emotional distress claim in Utah are: 1) outrageous conduct by the defendant; 2) that was intended to cause, or reckless of the probability of causing, severe or extreme emotional distress; 3) and which caused such distress. *Samms v. Eccles*, 358 P.2d 344, 346-347 (Utah 1961); *see also Bennett v. Jones, Waldo, Holbrook & McDonough*, 2003 UT 9, ¶ 58, 70 P.3d 17; *White v. Blackburn*, 787 P.2d 1315, 1317 (Utah Ct. App. 1990).

Intentional infliction of emotional distress claims have been relatively unsuccessful in Utah courts, in part because liability may be imposed “only where the distress inflicted is so severe that no reasonable man could be expected to endure it.” *Grimm v. Roberts*, 784 P.2d 1238, 1246 (Utah Ct. App. 1989). Utah courts have repeatedly rejected intentional infliction of emotional distress claims arising out of an alleged wrongful termination. *See Zoumadakis v. Uintah Basin Med. Ctr.*, 2005 UT App 325, 122 P.3d 891, and cases cited therein.

Intentional infliction of emotional distress claims are also disfavored due to consistent warnings by the Utah Supreme Court that, “[d]ue to the highly subjective and volatile nature of emotional distress and the variability of its causations, the courts have historically been wary of dangers in opening the door to recovery therefore. This is partly because such claims may easily be fabricated: or as sometimes stated, are easy to assert and hard to defend against.” *Franco v. Church of Jesus Christ of Latter-Day Saints*, 2001 UT 25, ¶ 25, 21 P.3d 198 (citation omitted).

B. Negligent Infliction of Emotional Distress

Claims for negligent infliction of emotional distress in the employment setting are barred by the exclusive remedy provisions of the Utah Workers’ Compensation Act. *Gunderson v. May Dep’t Stores Co.*, 955 P.2d 346 (Utah Ct. App. 1998); *see also Sauers v. Salt Lake County*, 735 F. Supp. 381, 385 (D. Utah 1990).

Claims for negligent infliction of emotional distress against an employer must be pursued through the workers’ compensation system. Such claims require a showing of extraordinary mental stress from a sudden stimulus judged by an “objective standard in comparison with contemporary national employment and nonemployment life.” Utah Code § 34A-2-402. Good faith employer actions including disciplinary actions, work evaluations, and terminations may not form the basis for compensable mental stress claims. *Id.*

VIII. PRIVACY RIGHTS

A. Generally

Utah has implicitly recognized the four types of invasion of privacy delineated in the Restatement (Second) of Torts §§652A-652E, (1) intrusion upon the plaintiff’s seclusion or solitude, or into plaintiff’s private affairs; (2) appropriation, for the defendant’s advantage, of the plaintiff’s name or likeness; (3) public disclosure of embarrassing private facts about the plaintiff, and (4) publicity which places the plaintiff in a false light in the public eye. *See Stien v. Marriott Ownership Resorts, Inc.*, 944 P.2d 374, 377–78 (Utah Ct. App. 1997).

To prevail in a claim regarding invasion of privacy, an employee must establish that 1) the employer publically disclosed private facts about the employee, 2) the facts disclosed were private facts, and 3) the matter made public is one that would be highly offensive and objectionable to a reasonable person. *Shattuck-Owen v. Snowbird Corp.*, 2000 UT 94, ¶ 11, 16 P.3d 555. Public disclosure requires more than disclosure to a small group of people. *Sorensen v. Barbuto*, 2006 UT App 340, ¶¶ 18–19, 143 P.3d 295, *aff’d and remanded on different grounds*, 2008 UT 8, 177 P.3d 614.

B. New Hire Processing

1. Eligibility Verification & Reporting Procedures

Utah’s “Private Employer Verification Act” is contained in Utah Code § 13-47-101 *et. seq.* The Act requires a private employer who employs 15 or more employees “to verify the federal legal working status” of any new hires. Utah Code § 13-47-201.

Information regarding new hires must be reported to the new hire registry database at the Department of Workforce Services within 20 days of hire. Utah Code § 35A-7-101 *et. seq.* This includes the employee's name, address, social security number, date of hire, and the employers name, address and federal tax identification number. Utah Code § 35A-7-104.

2. Background Checks

An employer may not request that an applicant provide his or her social security number, date of birth, or driver license number, unless the request is (a) applicable to any applicant applying for the position, (b) the information is requested during the time in the employer's employment selection process when the employer obtains a background check or collects the information to provide to certain government entities, and (c) the applicant consents to the background check. Utah Code § 34-46-201.

Utah expressly allows employers to perform criminal background checks on prospective employees. Utah Code § 34-46-201(2)(b)(i).

C. Other Specific Issues

1. Workplace Searches

Utah has no specific provisions limiting workplace searches, beyond general common law prohibitions against intrusion into seclusion, etc. The general perception and practice are that any non-private area may be subject to search, including company-owned computers (subject to electronic monitoring statutes).

2. Electronic Monitoring

In addition to general law governing intrusion into seclusion (monitoring private areas, Utah Code §§ 76-9-402, 403), monitoring is subject to state criminal provisions governing interception of communications and access to electronic communications. See Utah Code §§ 77-23a-1 and 77-23b-1, *et seq.*

Further, employers are prohibited from asking or requiring an employee or prospective employee "to disclose a username or password...that allows access to the employee's or applicant's personal internet account," or to take adverse actions against an individual who refuses to disclose such information. Utah Code § 34-48-201. "Personal internet account" is defined as "an online account that is used by an employee or applicant exclusively for personal communications unrelated to any business purpose of the employer." Utah Code § 34-48-102.

Utah law expressly allows an employer to monitor an employee's internet activity, in accordance with state and federal law. Utah Code § 34-48-202(3).

3. Social Media

Employers are prohibited from asking or requiring an employee or prospective employee "to disclose a username or password...that allows access to the employee's or applicant's personal internet

account,” or to take adverse action against an individual who refuses to disclose such information. Utah Code § 34-48-201. “Personal internet account” is defined as “an online account that is used by an employee or applicant exclusively for personal communications unrelated to any business purpose of the employer.” Utah Code § 34-48-102.

4. Taping of Employees

See discussion on electronic monitoring and general privacy law described above.

5. Release of Personal Information on Employees

The Protection of Personal Information Act, Utah Code § 13-44-101 et. seq., was enacted primarily to protect personal information gathered by businesses about their customers. However, the Act’s language is broad enough that it may apply to employees as well. It requires businesses to implement reasonable procedures to prevent the unlawful use or disclosure of personal information and requires that personal records be destroyed in such a way that the information contained thereon is rendered indecipherable. Utah Code § 13-44-201.

Under the Utah Employment Selection Procedures Act, Utah Code § 34-46-101 et al, an employer may not provide information about an applicant obtained through the initial selection process for a purpose other than to determine whether or not the employer will hire the applicant as an employee; or to a person other than the employer. Utah Code § 34-46-202(1).

6. Medical Information

Employers are prohibited from releasing medical records gathered in connection to workers’ compensation litigation. Utah Admin Code R612-300-10.

Utah’s Genetic Testing Privacy Act, Utah Code §§ 26-45-101 et seq., prohibits an employer in connection with hiring, promotion, retention, or other related decision from: (a) accessing or taking into consideration private genetic information about an individual; (b) requesting or requiring an individual to consent to a release of private genetic information, (c) request or require an individual to submit to a genetic test, and (d) take into consideration the fact that an individual has taken or refused to take a genetic test. Utah Code § 26-45-103(1).

7. Restrictions on Requesting Salary History

Utah does not have any restrictions on requesting an employee’s salary history.

IX. WORKPLACE SAFETY

A. Negligent Hiring/Supervision Retention

Negligent hiring and retention are a subset of the tort of negligent employment. *Retherford v. AT&T Communications of Mountain States, Inc.*, 844 P.2d 949, 972-73, n 15. (Utah 1992). It requires a showing that 1) the employer knew or should have known that its employee posed a

foreseeable risk of causing harm, 2) that the employee caused such harm, and 3) that the employer's negligence in hiring the employee proximately caused the harm. *Id.* at 973.

B. Interplay with Worker's Comp. Bar

Claims against an employer for most injuries suffered by an employee while on the job are governed by the workers' compensation statute. *Helf v. Chevron U.S.A., Inc.*, 2009 UT 11, ¶ 17, 203 P.3d 962. Injuries that result from intentional acts by an employer or coworkers, or that arise where the employer "knew or expected that injury would be the consequence of his action," are excluded from the workers' compensation exclusive remedy provisions. *Id.* at ¶ 43.

C. Firearms in the Workplace

An employer may ban the possession of firearms at a place of employment. *Hansen v. America Online, Inc.*, 2004 UT 62, ¶¶ 14-20, 96 P.3d 950. However, an employer may not ban the possession of a firearm in a locked vehicle in the employer's parking lot unless the employer provides alternate parking for individuals who wish to keep guns in their vehicles or provide secured firearm storage facilities outside the parking area. Utah Code § 34-45-103.

D. Use of Mobile Devices

Utah law does not specifically address employee use of mobile devices in the workplace. However, Utah prohibits using a handheld wireless communication device while operating a motor vehicle. Utah Code § 41-6a-1716. Moving violations that occur while using a cell phone have enhanced penalties. Utah Code § 41-6a-1715.

X. TORT LIABILITY

A. Respondeat Superior Liability

An employer may be held liable for an employee's actions if the employee is acting in the course and scope of his employment at the time of the act giving rise to the injury. *Sutton v. Byer Excavating, Inc.*, 2012 UT App 28, ¶ 7, 271 P.3d 169. To establish that an employee was acting in the course and scope of his employment, the party asserting respondeat superior must show that: (1) the employee's conduct was of the general kind the employee was employed to perform, and (2) the employee's conduct was motivated, at least in part, by the purpose of serving the employer's interest. *M.J. v. Wisan*, 2016 UT 13, ¶ 15, 371 P.3d 21.

B. Tortious Interference with Business/Contractual Relations

A cause of action for tortious interference with business/contractual relations is available to a plaintiff, who can establish: that (1) the defendant intentionally interfered with the plaintiff's existing or potential economic relations, (2) by improper means, (3) causing injury to the plaintiff. *Eldridge v. Johndrow*, 2015 UT 21, ¶ 70, 345 P.3d 553.

1. Improper Means

To meet the “improper means” element, “a plaintiff must show that the defendant’s means of interference were contrary to statutory, regulatory, or common law or violated an established standard of a trade or profession.” *Anderson Dev. Co. v. Tobias*, 2005 UT 36, ¶ 20, 116 P.3d 323 (internal quotes omitted). For example, an airplane maintenance company that pulled customers from another maintenance company was held to have utilized improper means because it began operations before it was in compliance with the governing municipal code. *AH Aero Services, LLC v. Ogden City*, 2007 WL 2570207, at 10 (D. Utah 2007).

The improper means element is not satisfied by a showing that a defendant merely acted with the intent to gain economic benefit. *Manassas Travel, Inc. v. Worldspan, L.P.*, 2008 WL 1925135, at 3–4 (D. Utah 2008). Likewise, a breach of contract or a breach of the implied covenant of good faith and fair dealing are not improper means. *Id.* at 3 n.3 (citation omitted).

XI. RESTRICTIVE COVENANTS/NON-COMPETE AGREEMENTS

A. General Rule

Unless otherwise agreed, employees have a common law duty not to compete with their principal (employer) concerning the subject matter of the employee’s agency during the employee’s employment. *Prince, Yeates & Geldzahler v. Young*, 2004 UT 26, 94 P.3d 179.

Non-competition agreements are generally enforceable in Utah, if they are “carefully drawn to protect only the legitimate interests of the employer.” *Robbins v. Finlay*, 645 P.2d 623, 627 (Utah 1982). To meet this requirement: (1) the covenant not to compete must be supported by consideration; (2) no bad faith may be shown in the negotiation of the contract; (3) the covenant must be necessary to protect the goodwill of the business; and (4) the covenant must be reasonable in its restrictions in terms of time and geographic area.” *Kasco Serv. Corp. v. Benson*, 831 P.2d 86, 88 n.1 (Utah 1992), *citing Allen v. Rose Park Pharmacy*, 237 P.2d 823, 828 (Utah 1951).

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. A post-employment restrictive covenant that violates this time limit is void. Utah Code § 34-51-201. Restrictive covenants for employers in the broadcasting industry are subject to more restrictive terms under Utah law. *See id.* Statutory provision governing restrictive covenants do not prohibit a reasonable severance agreement that includes a post-employment restrictive covenant. The severance agreement, however, remains subject to any requirements imposed under common law. § 34-51-202.

The factors considered in determining the reasonableness of a non-competition agreement include: “its geographical extent; the duration of the limitation; the nature of the employee’s duties; and the nature of the interest which the employer seeks to protect such as trade secrets, the good will of his business, or an extraordinary investment in the training or education of the employee.” *Robbins v. Finlay*, 645 P.2d 623, 627 (Utah 1982).

B. Blue Penciling

There are no Utah cases that address blue penciling.

C. Confidentiality Agreements

Utah recognizes confidentiality agreements, except as to government parties. Such agreements are construed consistent with ordinary contract principles.

D. Trade Secrets Statute

Under the Utah Uniform Trade Secrets Act (“UTSA”), Utah Code §§ 13-24-1 *et. seq.*, injunctive relief is available for misappropriation of a trade secret by an employee or ex-employee, as well as damages reflecting both the employer’s loss and the employee’s gain. Utah Code §§13-24-3, 4; *Water & Energy Sys. Tech., Inc. v. Keil*, 2002 UT 32, 48 P.3d 888.

Utah no longer recognizes a common law cause of action against an employee who misappropriates a trade secret, as the courts have interpreted that cause of action to be superseded by the UTSA. *StorageCraft Tech. Corp. v. Kirby*, 744 F.3d 1183 (10th Cir. 2014).

Analysis under the UTSA involves two steps. “First, the finder of fact must determine whether the information in question constitutes a trade secret entitled to protection. Second, the finder of fact must determine whether the trade secret was misappropriated.” *Hammerton, Inc. v. Heisterman*, 2008 WL 2004327, at 8 (D. Utah 2008).

E. Fiduciary Duty and their Considerations

An employer-employee relationship is a special agency relationship that gives rise to a fiduciary duty. *Spencer Law Office, LLC v. Dept. of Workforce Servs.*, 2013 UT App 138, ¶¶ 17-18 (internal quotations and alterations omitted). However, courts are careful in defining the scope of the fiduciary obligations “an employee owes when acting as the employer’s agent in pursuit of business opportunities, for although an employee should not compete with the employer for whom he still works, the employer’s right to demand and receive loyalty must be tempered by society’s legitimate interest in encouraging competition.” *Id.* Thus, while an employee cannot compete with his employer while still employed, he can make plans to go into competition with his employer and has no duty to disclose his plans to his employer. *Id.*

1. Injunctive Relief

An injunction is available for breaches of restrictive covenants. A preliminary injunction may be obtained only by showing that: (1) the employer will suffer irreparable harm unless the order and injunction issues; (2) the threatened injury to the employer outweighs whatever damage the proposed order or injunction may cause the restrained party; (3) the order or injunction, if issued, would not be adverse to the public interest; and (4) there is a substantial likelihood that the employer will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.

2. Forum Selection Clauses

Forum selection clauses create a presumption in favor of jurisdiction and will be upheld as long as there is a rational nexus between the forum selected and/or consented to, and either the parties to the

contract or the transaction that are the subject matter of the contract. The rationale nexus test does require, at least, some connection to Utah. Such a nexus can be established if the employer has its principle place of business in the forum, the employee has performed some work for the employer in the forum, or the employee has otherwise reached out to the forum on behalf of the forum by mail or phone. *Phone Directories Co. v. Henderson*, 2000 UT 64, ¶ 15, 8 P.3d 256, 261.

3. Enforcement by Successor and Assigns

Utah courts have not addressed whether restrictive covenants are assignable in the absence of employee consent. The presumption in Utah, however, is that contracts are assignable unless there is an express provision within the contract prohibiting assignment or if the assignment would materially alter the obligor's duty or risk.

XI. DRUG TESTING LAWS

A. Public Employers

State employees are subject to drug testing. Utah Code § 67-19-36. Unless the position is a highly sensitive one, reasonable suspicion must be present to test. *Id.* Random drug testing is allowed for "highly sensitive positions." *Id.* Procedures for drug testing of county and municipal employees may depend upon local ordinances and personnel manuals. Other procedural restrictions also apply. *Id.*

B. Private Employers

Utah law permits some testing pursuant to a written policy. Utah Code § 34-38-7.

The statute sets forth specific conditions relating to the identification and collection of samples, the timing of testing, and the requirements for collecting and testing. Utah Code § 34-38-4, et seq. The code precludes a cause of action for failing to test or detect drug use, or for termination of a testing program, and limits claims for monetary damages to employers acting in bad faith, so long as the employer's drug testing program adheres to the requirements of the Code. Utah Code § 34-38-9, et. seq.

By statute, no cause of action for defamation may be maintained in connection with a drug test unless: 1) the results of that test were disclosed to any person other than the employer, an authorized employee or agent of the employer, or the tested (prospective) employee; 2) the information disclosed was based on an inaccurate test result; 3) the inaccurate test result was disclosed with malice; and 4) all elements of a traditional defamation claim are established. Utah Code § 34-38-11. Test results are confidential. Utah Code § 34-38-13.

XII. STATE ANTI-DISCRIMINATION STATUTE(S)

A. Employers/Employees Covered

The scope of employer coverage is addressed in connection with the individual statutes delineated below.

B. Types of Conduct Prohibited

Discharging an employee based on race, religion, color, sex, national origin, age (40 or over), sexual orientation, gender identity, disability, pregnancy, childbirth or pregnancy-related conditions is prohibited. Utah Code § 34A-5-106. Retaliation against an employee who opposes illegal practices is also prohibited under the act. *Id.* The law applies to employers with 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year. Utah Code § 34A-5-102(1)(h)(D). This statute preempts all common law remedies for employment discrimination. *Gottling v. P. R. Inc.*, 2002 UT 95, 61 P.3d 989.

The Utah Antidiscrimination Act protects an employees' expression of religious or moral beliefs in the workplace if such expression is done "in a reasonable, non-disruptive, and non-harassing way on equal terms with similar types of expression or belief commitments allowed by the employer in the workplace, unless the expression is in direct conflict with the essential business-related interests of the employer." Utah Code § 34A-5-112(1).

The Utah Antidiscrimination Act also prohibits adverse actions against an employee for lawful expression or expressive activity outside the workplace regarding the person's religious, political, or personal convictions. Utah Code § 34-5-112(2).

An employee's refusal to assist in performing an abortion on moral or religious grounds may not be the basis for discrimination or termination. If such action is taken, the employee can file a civil claim for equitable relief. Utah Code § 76-7-306.

No employee may be discharged for filing a complaint, testifying or exercising rights under the state Occupational Safety and Health Act. Utah Code § 34A-6-203. This statute applies to all employers "having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire." Utah Code § 34A-6-103(1)(f)(3).

C. Administrative Requirements

The Labor Commission of Utah is the agency responsible for processing charges of unlawful employment discrimination under Utah's anti-discrimination laws, and, as an Equal Employment Opportunity Commission ("EEOC") deferral agency, most federal anti-discrimination laws. For a general description of the Labor Commission's role in discrimination claims, see *Burton v. Exam Ctr.*, 2000 UT 18, 994 P.2d 1261, and the accompanying dissent.

The typical procedure is as follows:

1. The complaining party files a charge with the Labor Commission and attends an intake interview.
2. The Commission issues a notice of charge of discrimination to the employer and requests a written response (usually within 10 days).
3. The Labor Commission requests the parties to attend a voluntary conciliation conference to determine whether the claim may be settled. If not, a Commission investigator is assigned to

investigate the claim and recommend whether there is cause for the EEOC to commence an action on behalf of the complaining party.

4. In most cases, no investigation is ever conducted because the claimant can request a Right to Sue letter 180 days after the charge was filed. (“Right to Sue” means that the charge has been on file the required period of time, not that the merits of the claim have been assessed.) Plaintiffs often submit charges only to exhaust required administrative remedies, but have no real interest in having the matter resolved through the administrative agency. A plaintiff has 90 days from receipt of the Right to Sue letter to file a lawsuit in court.

5. If the matter runs its course through the agency, an investigation is conducted, including a fact-finding conference between the parties to ascertain the relevant circumstances. This usually takes one to two years.

6. If the investigator concludes that cause exists, a recommendation will be made to the EEOC, which will issue a cause letter and demand the employer take action to remedy the wrongful discrimination. If the employer disputes the finding, the EEOC may sue on behalf of the employee, or issue a Right to Sue letter to the employee who is then free to commence a lawsuit for damages and other relief provided by the various laws.

7. If the investigator concludes that there is no cause for the charge, the EEOC will inform the claimant of his or her right to commence an action. *See generally Burton*, 2000 UT 18, 994 P.2d 1261.

D. Remedies Available

By statute, upon finding a discriminatory or prohibited employment practice, the presiding officer has the power (and mandate) to issue an order requiring the respondent to cease such practice “and to provide relief to the complaining party, including reinstatement, back pay, benefits, and attorneys’ “fee and costs.” Utah Code § 34A-5-107(9).

XIII. STATE LEAVE LAWS

A. Jury/Witness Duty

No employee may be discharged for responding to a summons for jury duty, or be forced to use sick leave or vacation days to respond. Utah Code § 78B-1-116. An employer may also not deprive an employee of employment or threaten or otherwise coerce the employee regarding employment because the employee attends a deposition or hearing in response to a subpoena. Utah Code § 78B-1-132.

B. Voting

An employer may not attempt to influence an employee’s vote by force, violence, threats, termination, or promotion. Utah Code § 20A-3a-503. Any such attempts are punishable as a class B misdemeanor as well as revocation of a corporation’s Utah business charter. *Id.* Employers must extend up to two hours of paid leave to an employee for voting if the employee does not have at least three hours of time off between the time polls open and close. Utah Code § 20A-3-103.

C. Family/Medical Leave

Utah does not have its own leave requirements for family/medical leave.

D. Pregnancy/Maternity/Paternity Leave

Utah law does not have any provisions regarding maternity or paternity leave.

A woman may breast feed, covered or uncovered, in any location where she is authorized to be present. Utah Code § 17-15-25.

E. Day of Rest Statutes

There are no applicable statutes, except that car dealerships cannot sell vehicles on consecutive days of Saturdays and Sundays. Utah Code § 41-3-702. Depository institutions cannot be open on Sunday. Utah Code § 7-1-808. *See Gronlund v. Salt Lake City*, 113 Utah 284, 194 P.2d 464 (1948) (general discussion of permissible day of rest powers). *See also Dodge Town, Inc. v. Romney*, 480 P.2d 461 (1971).

F. Military Leave

Any member of the military reserve who enters active duty pursuant to military orders is granted a leave of absence from public employment of up to five years (such leave is unlimited for public employees, public officers, and legislative employees). Such employees must be returned to their prior employment with the seniority, status, pay, and vacation the employee would have had if he had not been absent for military purposes. Utah Code §§ 39-3-1, 39-1-36.

State employees are granted full pay for up to 15 days of reserve training with the armed forces. Utah Code § 39-3-2(1). County and municipal employees may be granted similar pay benefits on a county by county basis. Utah Code § 39-3-2(2).

G. Sick Leave

There is no Utah law requiring private employers to grant an employee sick leave benefits, either paid or unpaid. Eligible State employees accrue four hours of sick leave per pay period. Utah Admin Code R477-7-4. However, if sick leave is promised, an employee may have a contractual right to such a benefit. *Cook v. Zions First Nat'l Bank*, 919 P.2d 56, 59 (Utah Ct App. 1996).

H. Domestic Violence Leave

Utah law does not have any provisions regarding domestic violence leave.

I. Other Leave Law

Utah does not have any other leave laws.

XIV. STATE WAGE AND HOUR LAWS

A. Current Minimum Wage in State

The current Utah minimum wage is \$7.25 per hour. Utah Admin. Code R610-1-3.

B. Deductions from Pay

An employer may deduct federal, state, and local taxes from an employee's paycheck, as well as valid attachments or garnishments. Utah Admin. Code R610-3-18(A-C). Fees and contributions for organizations such as health or retirement benefit plans, deposits to a financial institution, and payments on loans made by the employer may also be deducted so long as the employee has given written authorization. Utah Admin. Code R610-3-18(D-E, H, I).

Payments for goods and services purchased from the employer can be deducted so long as the employee has possession of the goods or services purchased and written acknowledgment is provided by the employee. Utah Admin. Code R610-3-18(F).

In limited circumstances, an employer may deduct damages suffered by the employer due to the employee's negligence. However, payment for such damages must not be available to the employer from other sources such as insurance. Further, the damages must be determined by a judicial proceeding or be expressly authorized in writing by the employee. Utah Admin. Code R610-3-18(G). An employer may deduct damages caused by an employee's criminal acts where the employee has been adjudged guilty of such acts in a judicial proceeding or the employee willfully admits to the destruction of company property. Utah Admin. Code R610-3-18(J).

Sums may also be deducted, in limited circumstances, for money shortages in a register, the purchase of goods necessary for the employment of the employee, or for goods that were assigned to the employee but not returned at termination. Admin. Code R610-3-18(K-M).

C. Overtime rules

There are no Utah laws that mandate the payment of overtime wages.

D. Time for payment upon termination

If the employee voluntarily terminates his employment, payment of outstanding wages is due on the next regular payday after termination. Utah Code § 34-28-5(2).

If the employee is involuntary terminated by the employer, payment of outstanding wages is due within 24 hours. If the employee makes written demand for payment, and the employer fails to pay the amount owed within 24 hours, the employee continues to accrue wages, at the same rate they were paid at the time of termination, until full payment is made. Such wages accrue for up to 60 days. Utah Code § 34-28-5(1).

E. Breaks and Meal Periods

There is no Utah law requiring an employer to provide adult employees lunch breaks or rest periods.

For employees under the age of 18, employers must allow the opportunity for a meal period of not less than 30 minutes and not later than five hours after the beginning of a minor employee's workday. If, during the meal period, the minor employee cannot be completely relieved of all duties and permitted to leave the work station or area, the meal period must be paid as time worked. At least a 10 minute paid rest period for each four hours, or fraction thereof, shall be provided for each minor employee. Utah Admin. Code R610-2-3.

F. Employee Scheduling Laws

All such laws are referenced above.

XV. MISCELLANEOUS STATE STATUTES REGULATING EMPLOYMENT PRACTICES

A. Smoking in Workplace

Smoking is entirely prohibited in places of public access and publicly owned buildings. Utah Admin. Code R392-510-5. Places of public access are defined in Utah Code § 26-38-2(2), and include nearly every type of building in which business is performed.

B. Health Benefit Mandates for Employers

Utah does not mandate health benefits for private employers. There are some mandates for smaller pools of public workers such as the state employee risk pool (Utah Code § 49-20-407) and institutions of higher learning (Utah Code § 53B-1-101.8).

C. Immigration Laws

Private employers who employ 15 or more employees must verify a new hire's legal working status using a status verification system such as E-Verify. Utah Code § 13-47-201.

D. Right to Work laws

Utah is a right to work state. Its statutory right to work provisions are located at Utah Code §§ 34-34-1, et seq.

E. Lawful Off-duty conduct (including lawful marijuana use)

Utah allows marijuana for medical purposes, but using it for recreation remains illegal. There is no Utah law that addresses the employment consequences of the use of marijuana outside of employment.

Utah public policy related to possession of firearms does not implicate an employer's right to restrict possession of firearms on an employer-owned parking lot. As such, an employer may ban the possession of firearms at a place of employment. *Hansen v. America Online, Inc.*, 2004 UT 62, ¶¶ 14-20,

96 P.3d 950. However, an employer may not ban the possession of a firearm in a locked vehicle in the employer's parking lot unless the employer provides alternate parking for individuals who wish to keep guns in their vehicles or provide secured firearm storage facilities outside the parking area. Utah Code § 34-45-103.

A city may reasonably reprimand an officer under its code of ethics for off-duty, consensual sex if the police department's code of ethics requires officers to keep their private lives unsullied as an example to all and to behave in a manner that does not bring discredit to the officer or the agency. *Seegmiller v. LaVerkin City*, 528 F.3d 762, 765-66 (10th Cir. 2008).

As part of Utah's Antidiscrimination Act, an employer may not discharge, demote, terminate or refuse to hire any person, or retaliate against any person otherwise qualified for lawful expression or expressive activity outside of the workplace regarding the person's religious, political or personal convictions, including convictions about marriage, family, or sexuality, unless the expression or expressive activity is in direct conflict with the essential business-related interests of the employer. Utah Code § 34A-5-112.

F. Gender Transgender Expression

Utah's Antidiscrimination Act prohibits discrimination on the basis of sexual orientation or gender identity. Utah Code § 34A-5-106. The Act does not prohibit an employer from adopting reasonable dress and grooming standards provided that these standards afford reasonable accommodations based on gender identity. *Id.* § 34A-5-109. The Act also does not prohibit an employer from adopting reasonable rules and policies that designate sex-specific facilities, such as restrooms and dressing rooms, provided that the employer's rules afford reasonable accommodation based on gender identity to all employees. *Id.* § 34A-5-110

In Utah, the term "sex" under Title VII is held to refer to male or female. As such, transgender is not a protected class under Title VII. *Etsitty v. Utah Transit Authority*, 502 F.3d 1215, 1221 (10th Cir. 2007). Due to the binary conception of sex, transsexuals may not claim protection under Title VII and transsexual status should be irrelevant to the availability of protection under Title VII. *Id.*

G. Other Key State Statutes

All such statutes are referenced above.