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I. AT-WILL EMPLOYMENT

A. Statute

Mississippi does not have a statute codifying at-will employment.

B. Case Law

Mississippi's Courts have applied the at-will employment doctrine since 1858. *Butler v. Smith & Tharpe*, 35 Miss. 457 (Miss. 1858). The doctrine was subsequently reaffirmed in *Rape v. Mobile & Ohio Railroad Co.*, 100 So. 585 (Miss. 1924). The court in *Rape* concluded that a contract for permanent employment is terminable at the pleasure of either party unless it is supported by some consideration other than the obligation of service to be performed on the one hand and wages to be paid on the other. *Rape*, 100 So. at 588. Unless one of a limited number of exceptions apply, Mississippi follows the at-will employment rule, i.e. "either the employer or the employee may have a good reason, a wrong reason, or no reason for terminating the employment." *DeCarlo v. Bonus Stores, Inc.*, 2008 Miss. LEXIS 351 (Miss. July 17, 2008).

II. EXCEPTIONS TO AT-WILL EMPLOYMENT

A. Implied Contracts

1. Employee Handbooks/Personnel Materials

Language in an employee handbook may create contractual obligations for an employer, as explained by the Mississippi Supreme Court, as follows:

The question in this case is when an employer furnishes its employees a detailed manual setting forth its rules of employment, and setting forth procedures that will be followed in event of infraction of its rules of employment, can it completely ignore the manual in discharging an employee for an infraction clearly covered by the manual? Put otherwise, when an offense specifically covered by the employers own manual provides no more severe disciplining than a warning or counseling of the employee, may the employer pay no attention to the manual and fire the employee instead? . . . We hold the employer to its word. . . . We hold in this case that because the manual was given to all employees, it became a part of the contract. It did not give the employees tenure or create a right of employment for any definite length of time, but it did create an obligation on the part of The Orchard to follow its provisions in reprimanding, suspending or discharging an employee for infractions specifically covered therein.

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Bobbitt v. Orchard, Ltd., 603 So. 2d 356, 361 (Miss. 1992).

2. Provisions Regarding Fair Treatment

Absent a disclaimer, an employer must follow the procedures outlined in its employment manual regarding discipline for violations of rules specifically covered by the manual, and failure to do so can give rise to a claim for breach of contract. See *Bobbitt*, 603 So. 2d 356.

3. Disclaimers

A handbook that sets forth the conditions of employment, policies, practices, responsibilities, rules of conduct, and employee benefits does not remove employees from their at-will status, so long as the handbook contains a contract disclaimer and states that employees retain their month-to-month employment relationships. *Byrd v. Imperial Palace*, 807 So. 2d 433 (Miss. 2001).

4. Implied Covenants of Good Faith and Fair Dealing

Generally, contracts in Mississippi are deemed to include an implied covenant of good faith and fair dealing in performance and enforcement. *Morris v. Macione*, 546 So. 2d 969, 971 (Miss. 1989). "Good faith is the faithfulness of an agreed purpose between two parties, a purpose which is consistent with justified expectations of the other party. The breach of good faith is bad faith characterized by some conduct which violates standards of decency, fairness or reasonableness." *Cenac v. Murry*, 609 So. 2d 1257, 1272 (Miss. 1992).

This, however, is not the case in employment-at-will relationships. The Mississippi Supreme Court has not recognized a cause of action based on a breach of an implied covenant of good faith and fair dealing in connection with an at-will employment relationship. See *Young*, 783 So. 2d at 663. Keep in mind, of course, that the result would be different where the employee works under an employment contract or where the employer creates contractual obligations on its part by way of language in its employee handbook.

B. Public Policy Exceptions

1. General

The first significant crack in the at-will rule in Mississippi came in *Laws v. Aetna Finance Co.*, 667 F. Supp. 342 (N.D. Miss. 1987). Making an *Erie* guess, the federal district judge concluded that the Mississippi Supreme Court would recognize a limited public policy exception to the employment-at-will rule where an employee alleges that his discharge was motivated by a refusal to engage in illegal acts for his employer. That conclusion was confirmed by the Mississippi Supreme Court six years later in *McArn v. Allied Bruce-Terminix Co., Inc.*, 626 So. 2d 603 (Miss.1993). In *McArn*, the court held:

We are of the opinion that there should be in at least two circumstances, a narrow public policy exception to the employment at will doctrine and this should be so whether there is a written contract or not: (1) an employee who refuses to participate in an illegal act as in *Laws* shall not be barred by the common law rule of employment at will from bringing an action in tort for damages against his employer; (2) an employee who is discharged for reporting illegal acts of his employer to the employer or anyone else is not barred by the

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employment at will doctrine from bringing action in tort for damages against his employer. To this limited extent this Court declares these public policy exceptions to the age old common law rule of employment at will. These exceptions apply even where there is privately made law governing the employment relationship, where the illegal activity either declined by the employee or reported by him affects third parties among the general public, though they are not parties to the lawsuit.

Id. at 607. The second exception has been narrowly extended to illegal acts of an employee's co-worker, but only where the co-worker's acts relate to the employer's business. *DeCarlo v. Bonus Stores, Inc.*, 989 So. 2d 351, 357 (Miss. 2008).

Other Courts in this jurisdiction have emphasized on several recent occasions that an employee's "mere conclusory assertions that the activities [in question] were actually illegal" are insufficient to support a *McArn* claim. See *Roop v. Southern Pharms. Corp.*, 188 So. 3d 1179, 1188 (Miss. 2016). To support a *McArn* claim, the employee must show that the illegal acts "warrant the imposition of criminal penalties, as opposed to mere civil penalties." *Pelot v. Criterion 3, LLC*, 2016 U.S. Dist. LEXIS 148250, *8 (N.D. Miss. Oct. 26, 2016). An employee's "good faith effort in reporting illegal activity" is protected under *McArn*, while "a good faith belief that illegal activity is taking place" is not. *Id.*

2. Exercising a Legal Right

See previous entry, including discussion of the *McArn* decision.

3. Refusing to Violate the Law

At-will employees discharged for refusing to participate in illegal acts may bring actions in tort against their former employers. *McArn*, 626 So.2d at 607.

4. Exposing Illegal Activity (Whistleblowers)

At will employees discharged for reporting illegal acts of their employers to the employer or anyone else may bring actions in tort against their former employers. *McArn*, 626 So.2d at 607. The plaintiff must prove the illegal act reported warrants the imposition of criminal penalties, as opposed to mere civil penalties. *Hammons v. Fleetwood Homes of Miss., Inc.*, 907 So. 2d 357, 36 (Miss. Ct. App.). Regulatory violations generally do not implicate *McArn*. *Smiley v. Georgia Pac. Wood Prods., LLC*, 2011 U.S. Dist. LEXIS 55616, 14-16 (S.D. Miss. May 23, 2011)(OSHA violations insufficient); *Lansdale v. Lehman-Roberts Co.*, 2009 U.S. Dist. LEXIS 26158, 4-5 (N.D. Miss. Mar. 24, 2009)(EPA and DOT violations insufficient).

In addition, at-will employees discharged for reporting illegal acts of their fellow employees may bring actions in tort against their former employers. See *DeCarlo*, 2008 Miss. LEXIS 351 at *18.

Public sector employees are protected by the Mississippi Whistleblower Protection Statute. MISS. CODE ANN. § 25-9-171 et seq.

III. CONSTRUCTIVE DISCHARGE

A constructive discharge may be found where the employer made conditions so intolerable that

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the employee reasonably felt compelled to resign. *Cothern v. Vickers, Inc.*, 759 So. 2d 1241 (Miss. 2000). The issue before the court in *Cothern* was whether the demotion and subsequent resignation of an employee with thirty years of experience constituted a constructive discharge. *Id.* at 1244. The *Cothern* court set forth the following test: "Would a reasonable person in the employee's shoes have felt compelled to resign?" *Id.* at 1246. The threshold question courts should seek to determine is whether the employee could reasonably conclude that he had no meaningful choice but to resign. Applying *Cothern*, the U.S. District Court in *Ramsey v. CenterPoint Energy/Entex*, 2006 U.S. Dist. LEXIS 3196 (S.D. Miss. Jan. 19, 2006), held that inherent in the *Cothern* court's definition of constructive discharge was the requirement that the employee resign, as opposed to being fired.

IV. WRITTEN AGREEMENTS

A. Standard "For Cause" Termination

An at-will employment relationship can be modified so that an employee can only be terminated for cause if the employee gives independent consideration in exchange for the employee's promise of "permanent" employment. *Hartle v. Packard Elec.*, 626 So. 2d 106, 109 (Miss. 1993). The employee bears the burden of proving that independent additional consideration has been given. *Id.*

B. Status of Arbitration Clauses

The Mississippi Supreme Court will uphold arbitration agreements if at all possible. *University Nursing Assocs. v. Phillips*, 842 So. 2d 1270 (Miss. 2003); *IP Timberlands Oper. Co. v. Denmiss Corp.*, 726 So. 2d 96, 104 (Miss. 1998) (commenting that "articles of agreement to arbitrate . . . are to be liberally construed so as to encourage the settlement of disputes and the prevention of litigation, and every reasonable presumption will be indulged in favor of the validity of arbitration agreements"). However, a party attempting to invoke arbitration may effectively waive that right if the party actively engages in litigation. *Phillips*, 842 So. 2d at 1276-77.

V. ORAL AGREEMENTS

A. Promissory Estoppel

Employment contracts may be created by both oral and written representations made during the recruiting and interview process, as well as those made after employment has commenced, so long as sufficient consideration is given in return. *See Winfield v. Groen Div.*, 740 F. Supp. 1230, 1233-35 (S.D. Miss. 1990). Handbooks and policy manuals explicitly incorporated by reference into a written employment agreement become part of the contract. *See, e.g., Robinson v. Board of Trustees*, 477 So. 2d 1352, 1353 (Miss. 1985).

B. Fraud

To succeed in establishing allegations of fraud, a plaintiff must furnish proof, by clear and convincing evidence, of the following: (1) a representation, (2) its falsity, (3) its materiality, (4) the speaker's knowledge of its falsity or ignorance of its truth, (5) his intent that it should be acted upon by the person and in the manner reasonably contemplated, (6) the hearer's ignorance of its falsity, (7) his reliance on its truth, (8) his right to rely thereon, and (9) his consequent and proximate injury. *Martin v. Winfield*, 455 So. 2d 762, 764 (Miss. 1984). The evidence to support such a claim must be "so clear that

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no hypothetical reasonable juror hearing the proof could conclude otherwise." *Winfield*, 740 F. Supp. at 1237.

C. Statute of Frauds

Section 15-3-1, MISS. CODE ANN., provides that "any agreement which is not to be performed within the space of fifteen months from the making thereof . . . unless . . . the promise or agreement upon which such action may be brought . . . shall be in writing . . ." This applies to employment contracts. *Union Healthcare, Inc. v. Morgan*, 750 So. 2d 1268, 1276 (Miss. Ct. App. 1999).

Where there is a written contract, extrinsic evidence of an unwritten (oral) agreement will not be received to vary or alter the terms of a written agreement that is intended to express the entire agreement of the parties on the subject matter at hand. *Grenada Auto Co. v. Waldrop*, 195 So. 491, 492 (Miss. 1940); *Perrault v. White Sewing Mach. Co.*, 127 So. 271, 274 (1930).

VI. DEFAMATION

A. General Rule

Defamation is divided into two torts: (1) libel for written defamation and (2) slander for oral defamation. *Funderburk v. Johnson*, 935 So. 2d 1084, 1101 (Miss. Ct. App. 2006) (citing *Speed v. Scott*, 787 So. 2d 626, 631 (Miss. 2001)). Defamation has been defined as "the act of harming the reputation of another by making a false statement to a third person." *Condere Corp. v. Moon*, 880 So. 2d 1038, 1044 (Miss. 2004). For a statement to be defamatory, the statement must tend to injure one's reputation, to "diminish the esteem, respect, goodwill, or confidence in which [one] is held," or to "excite adverse, derogatory or unpleasant feelings or opinions" against one. *Speed*, 787 So.2d at 631. The statement must also be clearly directed toward the plaintiff, and the defamation cannot be the product of innuendo, speculation, or conjecture, but instead, must be clear and unmistakable from the words themselves. *Ferguson v. Watkins*, 448 So. 2d 271, 275 (Miss. 1984).

There are four elements a plaintiff must prove to establish a claim for defamation:

- (1) a false and defamatory statement concerning the plaintiff;
- (2) an unprivileged publication to a third party;
- (3) fault amounting at least to negligence on the part of the publisher; and
- (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

Journal Publ'g Co. v. McCullough, 743 So. 2d 352, 359 (Miss. 1999).

The threshold question, though, in a defamation suit is whether the published statements are false. *Franklin v. Thompson*, 722 So. 2d 688, 692 (Miss. 1998). Truth is a complete defense to defamation suit. *Armistead v. Minor*, 815 So. 2d 1189 (Miss. 2002).

Regarding the fourth element, the plaintiff must prove that the statement was defamation *per se* (actionability of statement) or that there was a special harm caused by the statement. Defamation that is actionable *per se* needs no showing of special harm. *Speed*, 787 So. 2d at 632. Mississippi has recognized the following as slanders that are actionable *per se*:

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- (1) words imputing the guilt or commission of some criminal offense involving moral turpitude and infamous punishment;
- (2) words imputing the existence of some contagious disease;
- (3) words imputing unfitness in an officer who holds an office of profit or emolument, either in respect of morals or inability to discharge the duties thereof;
- (4) words imputing a want of integrity or capacity, whether mental or pecuniary, in the conduct of a profession, trade or business; and
- (5) words imputing to a female a want of chastity.

Id. at 632.

"All other slanderous words, no matter how grossly defamatory or insulting they may be, . . . are actionable only upon proof of 'special' damages -- special in the sense that it must be supported by specific proof, as distinct from the damage assumed to follow in the case of libel or of the kinds of slander [that are actionable *per se*]." *Id.* Regarding "special harm," the *Speed* court stated the following:

Special harm . . . is the loss of something having economic or pecuniary value. . . . The limitation [that arose centuries ago] has persisted in the requirement that special harm, to serve as the foundation of an action for slander that is not actionable *per se*, must be temporal, material, pecuniary or economic in character.

Id. "However, once it is shown that special harm resulted from a slander that was not actionable *per se*, recovery may then also be had for emotional distress and resulting bodily harm." *Id.* The *Speed* court further noted that "neither emotional distress nor bodily harm resulting from it is special harm sufficient to support an action for a slander that is not actionable *per se*." *Id.* The *Speed* court concluded its analysis on special harm by stating that:

[t]hese rules may at first blush seem artificial, but their purpose is obvious enough. Slander is an unusual tort, where mere spoken words become actionable. Everyday life contains risks of sharp words and wounded feelings, but also worse. Brought forward from common law origins is a balancing of the competing interests of one person to speak and another to be free from harm.

Id.

1. Libel

Libel is written or visual defamation. *Condere Corp.*, 880 So. 2d at 1044. See preceding entry for general law regarding defamation.

2. Slander

Slander is oral or aural defamation. *Id.* See preceding entry for general law regarding defamation.

B. References

See sources cited in Section VI(A) and (C).

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C. Privileges

Mississippi courts employ a bifurcated process when analyzing defamation claims. *Eckman v. Cooper Tire & Rubber Co.*, 893 So. 2d 1049, 1052 (Miss. 2005). The court must first determine whether the occasion called for a qualified privilege; and if a qualified privilege does exist, the court must then determine whether the privilege is overcome by malice, bad faith, or abuse. *Id.* The Mississippi Supreme Court has described the qualified privilege as:

[a] communication made in good faith and on a subject matter in which the person making it has an interest, or in reference to which he has a duty, is privileged if made to a person or persons having a corresponding interest or duty, even though it contains matter which without this privilege would be slanderous, provided the statement is made without malice and in good faith.

Id. at 1052.

Once a qualified privilege has been established, "it is cloaked with a presumption of good faith." *Young v. Jackson*, 572 So. 2d 378, 385 (Miss. 1990). To overcome the presumption of good faith, "this Court's law requires a showing of actual malice." *Id.* at 385. The burden of showing bad faith or malice is on the plaintiff. *Killebrew v. Jackson City Lines, Inc.*, 82 So. 2d 648, 650 (Miss. 1955).

Employers enjoy the protection of the qualified privilege defense to defamation in Mississippi, provided that, when the employer is commenting upon personnel matters to others, the communication is restricted to those who have a legitimate and direct interest in the subject matter. *Bulloch v. Pascagoula*, 574 So. 2d 637, 642 (Miss. 1990). The Mississippi Supreme Court has reaffirmed the notion that a qualified privilege extends to defamatory statements made in the context of an employer/employee relationship. *Beverly v. Powers*, 666 So. 2d 806 (Miss. 1995). In *Beverly*, the court stated that the qualified privilege is limited to those directly interested in the same matter, and, to constitute defamation, the statement must be made with actual malice. *Id.* at 809. In addition, the court affirmatively placed the burden on the plaintiff to prove actual malice. *Id.* However, the decision in *Beverly* also noted that the qualified privilege is broken if the speaker communicates the slander outside the scope of employees who have an interest in the matter. *Id.* at 810; *see also U.S. Axminster, Inc. v. Chamberlain*, 1997 U.S. Dist. LEXIS 18306 (N.D. Miss., Oct. 22, 1997).

D. Other Defenses

1. Truth

Truth is a complete defense to defamation. *Franklin*, 722 So. 2d at 692.

2. No publication

As stated in Section VI(A), a defamation claim requires proof of publication to a third party. *Journal Publ'g Co.*, 743 So. 2d at 359.

3. Self-Publication

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See above Section IV (A) - "General Rule" regarding elements of a defamation claim.

4. Invited Libel

There have been no recent decisions in Mississippi concerning "invited" defamation. However, in 1942, the Mississippi Supreme Court directly addressed such a claim and denied relief to the plaintiff who invited the defendant to make the alleged defamatory statement. *C.I.T. Corp. v. Correro*, 192 Miss. 522 (Miss. 1942). The court specifically stated that “[o]ne cannot invite another to make a statement concerning him and when his request is complied with claim that he was slandered thereby, unless it appears that the privilege extended by the invitation was abused and made the occasion of maliciously publishing matter defamatory of the one extending the invitation.” *Id.* at 530.

5. Opinion

A statement in the form of an opinion is actionable if it could reasonably be interpreted as declaring or implying an assertion of fact. *Roussel v. Robbins*, 688 So. 2d 714 (Miss. 1996).

E. Actual Harm to Reputation Recognized

See above Section IV (A) - "General Rule" regarding elements of a defamation claim.

F. Non-Disparagement Clauses

The Fifth Circuit Court of Appeals found non-disparagement clauses to be legal under Mississippi law. *Cooper Tire & Rubber Co. v. Farese*, 248 F. App'x. 555, 558 (5th Cir. Miss. 2007).

VII. EMOTIONAL DISTRESS CLAIMS

A. Intentional Infliction of Emotional Distress

To succeed on a claim alleging the intentional infliction of emotional distress, the plaintiff must show that the defendant's acts are "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Speed*, 787 So. 2d at 630. A plaintiff may not recover emotional distress damages resulting from ordinary negligence without proving some sort of physical manifestation of injury or demonstrable physical harm. *Wilson v. GMAC*, 883 So. 2d 56, 65 (Miss. 2004).

In an employment context, the Mississippi Supreme Court has held that “[a] claim for intentional infliction of emotional distress will not ordinarily lie for mere employment disputes.” *Lee v. Golden Triangle Planning & Dev. Dist., Inc.*, 797 So. 2d 845, 851 (Miss. 2001). The Fifth Circuit Court of Appeals, interpreting Mississippi tort law, has observed that “[l]osing a job is never pleasant, but it is far from outrageous in character, extreme in degree, and beyond all possible bounds of decency.” *Pipkin v. Piper Impact, Inc.*, 70 F. App'x. 760, 765 (5th Cir. 2003).

Successful claims of intentional emotional distress in the workplace have “usually been limited to cases involving a pattern of deliberate, repeated harassment over a period of time.” *Lee*, 797 So. 2d at 851. “Only in the most unusual cases does the conduct fall out of the realm of an ordinary employment dispute into the classification of extreme and outrageous.” *Pegues v. Emerson Elec. Co.*, 913 F. Supp. 976,

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983 (N.D. Miss. 1996). Additionally, to rise to the intentional tort exception of the Workers' Compensation Act, mere "willful and malicious" behavior is insufficient, there must be an "actual intent to injure." *Blailock v. O'Bannon*, 795 So. 2d 533 (Miss. 2001).

Claims for intentional infliction of emotional distress are subject to a one-year statute of limitations under MISS. CODE ANN. § 15-1-35. *CitiFinancial Mortg. Co. v. Washington*, 967 So. 2d 16, 19 (Miss. 2007).

B. Negligent Infliction of Emotional Distress

To recover for the negligent infliction of emotional distress, a plaintiff must typically show either physical injury or emotional distress that is medically cognizable and which requires medical treatment. *Sears Roebuck & Co. v. Devers*, 405 So. 2d 898, 902 (Miss. 1981). *But see Southwest Miss. Reg. Hosp. v. Lawrence*, 684 So. 2d 1257, 1269 (Miss. 1996) (plaintiff may recover for emotional injury proximately resulting from emotional injury, provided only that the injury was reasonably foreseeable by the defendant). At least in the context of an employer's discharge of an at-will employee, courts have been reluctant to entertain a claim of negligent infliction of emotional distress, finding the allegation at odds with the notion of at-will employment. *Pegues*, 913 F. Supp. at 982.

An employer defending a claim of negligent infliction of emotional distress should not overlook the possible defense that the tort claim is barred under the exclusive remedy provision of Mississippi's worker's compensation statute. The Mississippi Workers' Compensation Act provides an exclusive remedy to an injured employee, and thereby precludes a claim for negligent infliction of emotional distress. MISS. CODE ANN. § 71-3-9. The exclusivity of the Act is applicable except in two situations: (1) the injury is caused by the willful act of the employer or another employee acting in the course and scope of employment and in the furtherance of the employer's business; and (2) the injury must be one that is not compensable under the Act. *Newell v. South Jitney Jungle Co.*, 830 So. 2d 621, 624 (Miss. 2002).

Negligent infliction of emotional distress claims are subject to Mississippi's three-year catch all statute of limitations under Section 15-1-49 of the Mississippi Code. *Norman v. Bucklew*, 684 So.2d 1246, 1256 (Miss. 1996).

VIII. PRIVACY RIGHTS

A. Generally

The tort of invasion of privacy is composed of four separate sub-torts:

- (i) the intentional intrusion upon the solitude or seclusion of another;
- (ii) the appropriation of another's identity for an unpermitted use;
- (iii) the public disclosure of private facts; and
- (iv) holding another to the public eye in a false light.

Ayles v. Allen, 907 So. 2d 300, 306 (Miss. 2005). Mississippi's one-year statute of limitations under Section 15-1-35 of the Mississippi Code applies to invasion of privacy actions. *Young*, 572 So. 2d at 381.

The Mississippi Supreme Court has stated that to recover for an invasion of privacy, a plaintiff must show a substantial interference with his seclusion of a kind that "would be highly offensive to the

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ordinary, reasonable man, as a result of conduct to which the reasonable man would strongly object.” *Watkins v. United Parcel Serv., Inc.*, 797 F. Supp. 1349, 1359 (S.D. Miss. 1992). Privacy claims involving intentional intrusion upon solitude, misappropriation of name or likeness, and public disclosure of private facts have explicitly or implicitly been recognized by the Mississippi Supreme Court. *See, e.g., Jackson*, 572 So. 2d at 380-81.

B. New Hire Processing

1. Eligibility Verification & Reporting Procedures

Employers in Mississippi may only hire employees who are legal citizens of the United States or are legal aliens. Every employer must register with and utilize the status verification system to verify the federal employment authorization status of all newly hired employees. Contractors and subcontractors are also required to register and participate in the status verification system to verify the work eligibility status of all newly hired employees. MISS. CODE ANN. § 71-11-3.

All third-party employers that conduct business in Mississippi must first register with the Mississippi Department of Employment Security before placing employees into the workforce in Mississippi. Third-party employers must provide proof of registration and any participation in the status verification system to any Mississippi employer with whom they do business. *Id.*

2. Background Checks

Mississippi law permits public or private-sector employers to conduct voluntary drug and alcohol testing. If an employer elects voluntarily to conduct such testing, it must follow all terms of Section 71-7-3 of the Mississippi Code.

Background checks for particular areas of employment are discussed in the respective codified laws. For example, Mississippi law for background checks of employees conducting childcare activities is codified at MISS. CODE ANN. § 43-20-8; and the law on background checks for educators in schools is codified at MISS. CODE ANN. § 37-9-17.

C. Other Specific Issues

1. Workplace Searches

The Mississippi Supreme Court has stated that “[p]ositive law of Mississippi affords each person a substantial zone of freedom which, at his election, he may keep private; the zone surrounds person and place, and without his consent, may not be invaded by other persons or by the state.” *Id.* at 381. Although the court has recognized that such a zone of privacy exists and has implicitly recognized a cause of action for certain intrusions into that zone, there have not yet been any reported cases applying Mississippi law in which a plaintiff has recovered under such a claim. *Watkins*, 797 F. Supp. at 1360, n.12.

2. Electronic Monitoring

See discussion under Section VIII(A) above.

3. Social Media

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The Mississippi legislature has not yet codified laws regarding social media.

4. Taping of Employees

Mississippi has a law regulating the interception of wire or oral communications. MISS. CODE ANN. §§ 41-29-501 *et seq.* It is generally against the law to intercept and record the contents of a wire or oral communication by means of an electronic or mechanical device. MISS. CODE ANN. §41-29-529. However, this law exempts owners (“subscribers”) of the telephone line and members of the owners’ households. MISS. CODE ANN. §41-29-535; *Wright v. Stanley*, 700 So. 2d 274, 280 (Miss. 1997). Further, if a person has obtained consent from a party to the conversation, or is a party to the conversation himself, they will not be subject to civil liability if they “intercept” (i.e., record) the conversation, unless they do so with criminal or tortious intent. MISS. CODE ANN. § 41-29-531(e). Mississippi law also prohibits the unauthorized interception of cellular phone communications. MISS. CODE ANN. § 97-25-49.

5. Release of Personal Information on Employees

Mississippi does not have a statute pertaining to the privacy of employees’ personal information. However, Mississippi courts have held that certain information of public employees is subject to the Mississippi Public Records Act under MISS. CODE ANN. § 25-61-2 *et seq.* The general disclosure provisions of that Act are construed liberally, whereas a standard of strict construction is applied to the exceptions to disclosure. Certain records, including records regarding the days worked by public employees, leave taken with or without pay, and leave accrued by public employees are by their very nature relevant to the day-to-day operations of public agencies; thus, such information is public. *Miss. Dep’t of Wildlife, Fisheries & Parks v. Miss. Wildlife Enforcement Officers’ Ass’n*, 740 So. 2d 925 (Miss. 1999). However, items other than gross salary and leave time of public employees are *not* exempt from the Act. *Scruggs v. Board of Supers. Alcorn Cnty. Comm’rs.*, 85 So. 3d 325, 328 (Miss. 2012).

There is no Mississippi case law regarding the release of personal information of private employees.

6. Medical Information

Medical information should only be released upon court order or upon written authorization of the patient. MISS. CODE ANN. § 41-21-97; *see also Jackson*, 572 So. 2d at 378.

7. Restrictions on Requesting Salary History

There are no formal State restrictions related to employees’ salary history.

IX. WORKPLACE SAFETY

A. Negligent Hiring/Supervision/Retention

In Mississippi, an employer may be held liable “for the intentional acts of its employees if the employer either authorized the act prior to or ratified the act after its commission, or the act was committed within the scope of employment.” *Thatcher v. Brennan*, 657 F. Supp. 6 (S.D. Miss. 1986). For interaction between employees of the same employer, Mississippi has specifically stated that negligent supervision “is clearly barred by the exclusive remedy provision of the Mississippi Workers’ Compensation Law.” *Campbell v. Jackson Bus. Forms Co.*, 841 F. Supp. 772 (S.D. Miss. 1994).

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B. Interplay with Worker's Compensation Bar

There are three elements to a claim of compensable work-related injury: the injury was accidental, it arose out of and in the course of employment, and there is a causal connection between the injury and the disability. MISS. CODE ANN. § 71-3-3. An injury is compensable even in cases where employment did not cause the injury if the conditions of employment contributed to it. *Hedge v. Leggett & Platt, Inc.*, 641 So. 2d 9, 14 (Miss. 1994).

The Workers' Compensation Act "immunizes employers and co-employees for liability under common law negligence." *Russell v. Orr*, 700 So. 2d 619, 626 (Miss. 1997).

For a willful tort to be outside the exclusivity of the Mississippi Workers' Compensation Act, the employer's action must be done "with an actual intent to injure the employee." See *Dunn, Mississippi Workman's Compensation* (3d ed. 1982 & Supp. 1984). The employer's immunity prevails even if the employer is guilty of gross negligence, willfully fails to furnish a safe workplace, or knowingly orders the employee to perform a dangerous job. *Peaster v. David New Drilling Co.*, 642 So. 2d 344, 347-48 (Miss. 1994).

C. Firearms in the Workplace

Section 99-3-2 of the Mississippi Code authorizes federal law enforcement agents employed by the U.S. government to bear arms while working within the scope of their employment.

In Mississippi, employers may *not* prohibit individuals from storing or transporting firearms in a locked vehicle in any parking lot, parking garage, or other designated parking area, unless prohibited by other state or federal law. However, private employers *may* prohibit such storage in a parking area to which access is restricted or limited using a gate, security station, or other means of restricting or limiting public access onto the property. MISS. CODE ANN. § 45-9-55.

In addition to public parking areas described in Section 45-6-55 of the Mississippi Code, Section 45-9-101(13) enumerates various other locations where firearms are prohibited by law, eliminating any discretion employers have in those areas. However, if the workplace is not one of the enumerated areas, employers *do* have the discretion to prohibit weapons in the workplace if the employer posts a written notice that is clearly readable from at least 10 feet away stating that carrying firearms is prohibited. MISS. CODE ANN. § 45-9-101.

D. Use of Mobile Devices

Mississippi courts have not yet ruled on the use of mobile devices within the context of workplace safety.

X. TORT LIABILITY

A. Respondeat Superior Liability

Employers in Mississippi can be held derivatively liable for the negligence of their employees under the doctrine of *respondeat superior*. The employer is liable when the employee's negligent acts are

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done within the scope of the authority granted to the employee by the employer. *Commercial Bank v. Hearn*, 923 So. 2d 202, 204 (Miss. 2006).

Employers may also be held vicariously liable for intentional acts of an employee if the acts are “committed in furtherance of the employment; the tortfeasor employee must think (however misguided) that he is doing the employer’s business in committing the wrong.” *Patterson v. P.H.P. Healthcare, Corp.*, 90 F. 3d 927, 943 (5th Cir. 1996).

B. Tortious Interference with Business/Contractual Relations

An action for tortious interference with a contract ordinarily lies when all the following elements are present: 1) intentional and willful acts; 2) done to cause damages to the plaintiffs in their lawful business; 3) done with the purpose of causing damage and loss, without right or justifiable cause on the part of the defendant; and 4) actual loss occurs. *Collins v. Collins*, 625 So. 2d 786, 790 (Miss. 1993). It must also be proven that the contract would have been performed but for the alleged interference. *Par Indus., Inc. v. Target Container Co.*, 708 So.2d 44 (Miss. 1998).

In Mississippi, even though no formal contract may exist, an at-will employee may have a cause of action against a third party for tortious interference with a contract. *Levens v. Campbell*, 733 So. 2d 753 (Miss. 1999).

A party to a contract cannot be charged with interfering with their own contract. *Ham Marine, Inc., v. Dresser Indus.*, 72 F.3d 454, 462 (5th Cir. 1995). “Only where the person interfering with performance is a stranger to the contract does a party to the contract have a tortious interference cause of action against him.” *Id.*

Additionally, an individual who occupies a position of trust on behalf of another is privileged, in the absence of bad faith, to interfere with his principal’s contractual relationship with a third person. Interference with a contract “is not wrongful and actionable if undertaken by someone in the exercise of a legitimate interest or right which constitutes ‘privileged interference.’” *King’s Daughters & Sons Circle No. Two v. Delta Reg’l Med. Ctr.*, 856 So. 2d 600, 604 (Miss. Ct. App. 2003).

XI. RESTRICTIVE COVENANTS/NON-COMPETE AGREEMENTS

A. General Rule

Non-competition agreements have been viewed by Mississippi Courts as restrictive contracts which are a restraint of trade and individual freedom. *Kennedy v. Metropolitan Life Ins. Co.*, 759 So. 2d 362, 364 (Miss. 2000). Despite that, covenants not to compete are enforceable so long as there is an economic justification for doing so and it is (i) ancillary to another valid agreement (usually a contract of employment or sale of a going business) and (ii) the covenant is reasonable as to time, the scope of the activity restrained, and the geographical territory involved. *Redd Pest Control Co. v. Heatherly*, 157 So. 2d 133 (Miss. 1963). The Mississippi Supreme Court, however, has repeatedly emphasized that such agreements are “not favorites of the law,” placing the burden of establishing reasonableness on the person seeking to enforce the covenant. *Herring Gas Co. v. Magee*, 813 F. Supp. 1239, 1245 (S.D. Miss. 1993).

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The Mississippi Supreme Court has carved out the following distinction between proving "reasonableness" of a non-competition clause in an employer-employee contract and those in the sale of a business contract:

We recognize that there is a valid and accepted distinction between covenants not to compete in an employer-employee setting, and those dealing with the sale of a business, as in the present case. The essential line of distinction between the two (2) settings is that:

. . . the purchaser is entitled to protect himself against competition on the part of the vendor, while the employer is not entitled to protection against mere competition on the part of a servant. In addition thereto, a restrictive covenant ancillary to a contract of employment is likely to affect the employee's means of procuring a livelihood for himself and his family to a greater degree than that of a seller who usually receives ample consideration for the sale of the goodwill of his business. Thus, generally speaking, the territorial extent of a restrictive covenant entered into by the seller or purchaser of a business will be upheld by the courts with much greater readiness than the same provision would as part of a restrictive covenant ancillary to a contract of employment.

Cooper v. Gidden, 515 So. 2d 900, 905 (Miss. 1987). Under *Cooper*, an employment contract covenant not to compete will undergo more scrutiny as to reasonableness than a sale of a business contract where good will is involved.

The party seeking to enforce a noncompete agreement must prove by a preponderance of the evidence (1) the existence of a valid and binding contract and (2) a breach of that agreement. *Business Comms. Inc., v. Banks*, 90 So. 3d 1221, 1225 (Miss. 2012). Whether the plaintiff has been monetarily damaged is not an element in a breach of contract claim. *Id.* A plaintiff is entitled to those damages which he can prove by a preponderance of the evidence, or, at a minimum, nominal damages. *Id.* at 1225-26.

B. Blue Penciling

Mississippi courts have utilized what can be described as a heavy "blue pencil" rule to non-compete clauses. If a non-compete agreement is found unreasonable, courts can modify (and in fact, have modified) the limitations so that they are reasonable. *Redd Pest Control*, 157 So. 2d at 136.

C. Confidentiality Agreements

There is no Mississippi case law interpreting the legality of confidentiality agreements.

D. Trade Secrets Statute

Mississippi has a Uniform Trade Secrets Act, which is found at Mississippi Code Annotated, § 75-26-1 *et seq.* Actual or threatened misappropriation of trade secrets may be enjoined, although the injunction will expire when the trade secret has ceased to exist. MISS. CODE ANN. § 75-26-5. Damages are allowable and may include both the actual losses and unjust enrichment caused by the misappropriation. MISS. CODE ANN. § 75-26-7. If the misappropriation was willful or malicious, the court may award exemplary damages. *Id.* The statute of limitations for a trade secrets claim is three years. MISS. CODE ANN. § 75-26-13.

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E. Fiduciary Duty and Other Considerations

A restrictive covenant which devotes an employee's services solely to one business or employer imposes a fiduciary duty on the employee that is owed to his employer. *Cheatham v. Kem Mfg. Corp.*, 372 So. 2d 1085, 1088 (Miss. 1979).

The concept of fiduciary duties also arises in a business context involving the corporate-opportunity doctrine, which contemplates a situation in which an officer or director breached his fiduciary duty to the corporation by usurping a business opportunity of which the officer became aware and of which the corporation was financially able to take advantage. *Cooper v. Winnie Gilder & Cooper Gilder, Inc.*, 2009 Miss. App. LEXIS 219, *30 (Miss. Ct. App. Apr. 21, 2009).

1. Injunctive Relief

Injunctive relief is available to employers to protect confidential and trade secret information.

2. Forum Selection Clauses

Forum selection clauses are presumed to be enforceable unless the resisting party can show that (1) its incorporation into the contract resulted from fraud, undue influence, or overweening bargaining power, (2) the selected forum is so gravely difficult and inconvenient that the resisting party will for all practical purposes be deprived of its day in court, or (3) the enforcement of the clause would contravene a strong public policy of the forum in which the suit is brought, declared by statute or judicial decision. *Long Beach Auto Auction, Inc. v. United Sec. Alliance, Inc.*, 936 So. 2d 351, 355 (Miss. 2006).

3. Enforcement by Successors and Assigns

There are no cases on point, but these clauses are treated, for the most part, like any other contract provision.

XII. DRUG TESTING LAWS

In 1991, the Mississippi legislature enacted an extensive statutory scheme for drug and alcohol testing by an employer. MISS. CODE ANN. § 71-7-1 through 71-7-33. The statutes provide that an employer may, but is not required to, implement a drug testing policy. MISS. CODE ANN. § 71-7-27(1). An employer who violates the provisions of the statute is subject to a claim for compensatory damages and/or injunctive relief, to include reinstatement. MISS. CODE ANN. § 71-7-23 and § 71-7-25. Attorney's fees may be awarded if the employer knowingly or recklessly violates the statute.

A. Public Employers

Although those statutes have not been construed by the Mississippi Supreme Court, they appear to authorize and regulate drug testing of both public and private employees. MISS. CODE ANN. § 71-7-1, *et seq.* The statutes define an employee as "as any person who supplies a service for remuneration or pursuant to any contract for hire to a private or public employer in this state." Further, "employer" is defined as "any individual, organization or government body, subdivision or agency thereof." *Id.* A noted exception to the statute is for employers who are subject to federal law for the administration of drug and alcohol tests. MISS. CODE ANN. § 71-7-29.

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B. Private Employers

Both public and private employers are permitted to conduct drug testing pursuant to MISS. CODE ANN. § 71-7-1, *et. seq.* See subsection A above.

The Mississippi Alcohol and Drug Testing Statute provides that a private employer that chooses to implement a drug testing policy may elect whether that policy will be conducted pursuant to the statute. Miss. Code Ann. § 71-7-21. If the employer determines that it would rather proceed without the rights and obligations of the statute, the respective rights and duties of the employer and the employees are not affected by the statute; but are instead governed by applicable principles of contract and common law. MISS. CODE ANN. § 71-7-27(2). In the absence of an affirmative election, an employer is deemed to have elected to proceed outside of the statute. *Id.*

XIII. STATE ANTI-DISCRIMINATION STATUTE(S)

A. Employers/Employees Covered

Mississippi has no comprehensive fair employment practices law covering private employers. Private employers, employment agencies, and labor organizations within the state are covered, however, by the provisions of federal law on equal employment opportunity.

Mississippi State public employers are prohibited from discriminating against persons employed in state service, or persons seeking employment in state service. MISS. CODE ANN. § 25-9-149. “State service” does not however encompass local government (i.e., city or county government) employees. See § 25-9-107(b).

B. Types of Conduct Prohibited

Mississippi’s anti-discrimination statute prohibits State public employers from discriminating on the basis of race, color, religion, sex, national origin, age or handicap in state employment. MISS. CODE ANN. § 25-9-149 (1999); *see also* MISS. CODE ANN. § 25-9-103(e) (1999) (requiring the state personnel board to establish a personnel system to assure fair treatment of applicants and employees without regard to political affiliation, race, national origin, sex, religious creed, age, or disability).

C. Administrative Requirements

State employees may appeal employment decisions to an appeals board, whose decisions are subject to judicial review. MISS. CODE ANN. § 25-9-131.

D. Remedies Available

Private employees can obtain remedies consistent with State and federal law.

To pursue State remedies, State employees must exhaust their administrative remedies under Section 25-9-131 of the Mississippi Code. However, if State employees wish to pursue federal remedies (i.e., a Section 1983 action for federal constitutional rights violations), they are not required to exhaust Section 25-9-131’s administrative remedies and can judicially pursue their actions in federal or state

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court. *East Miss. State Hosp. v. Callens*, 892 So. 2d 800, 812 (Miss. 2004).

XIV. STATE LEAVE LAWS

A. Jury/Witness Duty

No employer may attempt to prevent an employee from serving on jury duty. MISS. CODE ANN. § 13-5-23.

B. Voting

Pursuant to Section 23-15-871, no employee may be coerced in or discharged for exercising his voting rights.

Corporate employers are subject to a \$250 civil penalty for every unlawful interference with social, civil, or political rights of their agents or employees. MISS. CODE ANN. § 79-1-9.

C. Family/Medical Leave

Mississippi has no comprehensive state family/medical leave law covering private employers.

D. Pregnancy/Maternity/Paternity Leave

Mississippi has no state law regarding employment practices for pregnancy, childbirth, or related medical conditions, but employers may be subject to federal law in this area.

No Mississippi statute provides maternity leave benefits for state employees, although a state employee who is the natural childbirth mother may use major medical leave for pregnancy and/or childbirth. MISS. CODE ANN. § 25-3-95. Similarly, there is no Mississippi statute on paternity leave.

E. Day of Rest Statutes

Mississippi has no “day of rest” law covering private employers.

F. Military Leave

Any person who is a member of any reserve component of the armed forces of the U.S., or an honorably discharged former member of the service of the U.S., who, in order to perform duties or receive training with the armed forces of the U.S. or of the State of Mississippi (i.e., members of the Mississippi National Guard), leaves employment, and who satisfactorily completes the duty or training, and remains qualified to perform the duties of the position, is entitled to be restored to the previous or a similar position. MISS. CODE ANN. § 33-1-19. Section 33-1-19, however, does not require private employers to pay employees on leave of absence for military training or service.

In addition, private employers may not deprive a member of any reserve component or any honorably discharged former member of the U.S. armed forces, of employment, or prevent employment, or discriminate in any of the conditions of employment. MISS. CODE ANN. § 33-1-15. A private employer who discriminates against an employee because of military service, or who attempts to dissuade an employee from enlistment or acceptance of a warrant or commission in any reserve or active component

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of the U.S. armed forces is guilty of a misdemeanor and subject to a fine of up to \$1,000, six months imprisonment, or both. *Id.*

G. Sick Leave

Mississippi has no specific “sick leave” laws.

H. Domestic Violence Leave

Mississippi has no specific “domestic violence leave” laws.

I. Other Leave Laws

Mississippi has no other relevant leave laws.

XV. STATE WAGE AND HOUR LAWS

Mississippi has no comprehensive wage and hour laws covering private employers. Most employers, however, are covered by the federal Fair Labor Standards Act (FLSA).

A. Current Minimum Wage in State

Mississippi has no state minimum wage law. The minimum wage in Mississippi is the federal minimum wage as enacted by the United States Congress. MISS. CODE ANN. § 25-3-40.

B. Deductions from Pay

Generally, no more than 25% of an employee’s weekly disposable earnings may be levied by attachment, execution, or garnishment. However, for a garnishment necessary to enforce a support order, this cap is raised to a range of 50% to 65%, depending on the debtor’s situation. These limits do not, however, apply to debts owed for state and local taxes. Further, wages are exempt from seizure until 30 days after the employee is served the write of attachment, execution, or garnishment. MISS. CODE ANN. § 85-3-4. It should be noted that the statute includes specific provisions relevant to high-income employees.

C. Overtime Rules

Mississippi has no overtime laws. Employers and employees are subject to federal overtime laws under the FLSA.

D. Time for payment upon termination

Mississippi law provides for certain payments upon termination of (a) public educators and (b) state employees, though neither category includes a time limit for payment. Depending on the school district, some public educators are due payment immediately upon termination: “[i]f a school district has a policy which provides for an individual to be paid for any accrued leave upon death or termination of employment, the district may make payment for that unused, uncompensated leave to the employee upon termination of employment, and, in the event of the death, such payment may be made to the

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person designated by such employee prior to employee's death. *See* MISS. CODE ANN. § 37-7-307. *See also Adams*, Oct. 3, 2003, A.G. Op. 03-0468.

All wages earned and unpaid at the time of termination are due at the time of termination and must be paid at the next regular pay date.

E. Breaks and Meal Periods

Mississippi has no specific “break” or “meal period” laws.

F. Employee Scheduling Laws

Mississippi has no specific “employee scheduling” laws.

XVI. MISCELLANEOUS STATE STATUTES REGULATING EMPLOYMENT PRACTICES

A. Smoking in Workplace

No public or private employer may require any employee to abstain from smoking or using tobacco during non-working hours or reject any applicant on that basis. MISS. CODE ANN. § 71-7-33 (2000).

B. Health Benefit Mandates for Employers

Mississippi prohibits the issuance of health insurance policies that restrict an insurer from assigning benefits to a health care provider. Miss. Code Ann. § 83-9-3. If an insured provides an insurer with written directions that the benefits provided by a health insurance policy be paid to a health care provider rendering services, the insurer shall pay the health care provider directly. MISS. CODE ANN. § 83-9-5.

Section 25-11-103 of the Mississippi Code provides that the value of any maintenance furnished to members of the Public Employees’ Retirement System on or after July 1, 2013, shall not be included in the earned compensation of the members for retirement purpose, and any value of in-kind benefits from the computation of earned compensation will also be excluded.

C. Immigration Laws

The Mississippi Employment Protection Act requires all employers in the state of Mississippi to only hire employees who are legal citizens of the United States or are legal aliens. MISS. CODE ANN. § 71-11-3. The Act requires every employer to register with and utilize the status verification system to verify the federal employment authorization status of all newly hired employees. All other immigration policies in Mississippi fall within the federal immigration laws.

D. Right to Work Laws

Mississippi is a right to work state. “Union shop” agreements are prohibited by law as illegal combinations against public policy. No person may be required, as a condition of employment, to join or refrain from joining a labor union or labor organization. Furthermore, no employer may require any person, as a condition of employment or continuation of employment, to pay any dues, fees, or other charges of any kind to any labor union or labor organization. Employees and applicants for employment

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who are denied employment or the continuation of employment in violation of Mississippi's "right-to-work" law are entitled to recover actual damages against their employer and any other person, corporation, or association acting in concert with him. Mississippi's "right-to-work" law does not however apply to any employer or employee under the jurisdiction of the Railway Labor Act. MISS. CODE ANN. § 71-1-47.

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

Mississippi has no employment-related laws that govern off duty conduct. It is still unlawful to possess or use marijuana in Mississippi. Employees are generally free to do what they please during their off time, but they can be terminated for off-duty (mis)conduct under Mississippi's at-will rule.

F. Gender/Transgender Expression

Mississippi has no state-specific employment laws that address gender/transgender issues (other than, perhaps, Section 25-9-103 which requires that public employees treat employees the same, regardless of their "sex").

G. Other Key State Statutes

1. Unclaimed Wages

Unclaimed wages are presumed abandoned five years after becoming payable. Amounts covered are unpaid wages and amounts distributable from a trust or custodial fund established to provide health, welfare, pension, vacation, severance, retirement death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits. MISS. CODE ANN. §§ 89-12-1; 89-12-13.

2. New Hires

Each employer doing business in Mississippi must report to the Directory of New Hires within the Department of Human Services: (1) the hiring of any person who resides or works in this state to whom the employer anticipates paying wages; and (2) the hiring or return to work of any employee who was laid off, furloughed, separated, granted leave without pay, or terminated from employment. MISS. CODE ANN. § 43-19-46.

3. Military Service

Any person who is a member of any reserve component of the armed forces of the U.S., or an honorably discharged former member of the service of the U.S., who, in order to perform duties or receive training with the armed forces of the U.S. or of the State of Mississippi (i.e., members of the Mississippi National Guard), leaves employment, and who satisfactorily completes the duty or training, and remains qualified to perform the duties of the position, is entitled to be restored to the previous or a similar position. MISS. CODE ANN. § 33-1-19 (2000). Section 33-1-19 however does not require private employers to pay employees on leave of absence for military training or service. Only restoration to their previous or similar position is required.

In addition, private employers may not deprive a member of any reserve component or any honorably discharged former member of the U.S. armed forces, of employment, or prevent employment,

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or discriminate in any of the conditions of employment. MISS. CODE ANN. § 33-1-15. A private employer who discriminates against an employee because of military service, or who attempts to dissuade an employee from enlistment or acceptance of a warrant or commission in any reserve or active component of the U.S. armed forces is guilty of a misdemeanor and subject to a fine of up to \$1,000, six months imprisonment, or both.

4. Background checks

Background checks are only required for certain employees including those of public schools, nursing homes, child residential homes, and childcare facilities under MISS. CODE ANN. §§ 37-9-17, 43-11-13, 43-15-6, and 43-20-8. Otherwise, background checks by private employers are not regulated or required by state law.

H. Local Ordinances

There are no significant local ordinances affecting employment rights.

I. New Developments (including COVID permanent changes)

Mississippi recently withdrew its statewide mask rules. Mississippi still encourages businesses to require masks and to comply with social distancing and other CDC recommendations, but there is no legal obligation to do so. Many businesses still require patrons to wear masks and socially distance.

Notwithstanding the revocation of masking requirements by the State, several cities (including the largest city in Mississippi – Jackson) still have mask mandates in place as of April 2021.

Mississippi has implemented loan and other economic development laws to assist businesses during the COVID pandemic, but the State has not modified any of substantive employment laws that have any bearing on the matters set out herein. Mississippi, as noted throughout this document, has very few actual employment laws.