

RHODE ISLAND

I. AT-WILL EMPLOYMENT

A. Statute

Rhode Island is an at-will employment jurisdiction as a matter of common law. In 2017, legislation was proposed in the Rhode Island General Assembly that would statutorily abolish the at-will employment doctrine in Rhode Island. This legislation also would require terminations from employment to be based on “just cause” and would create specific remedies for wrongful discharge from employment. This legislation, however, is still pending as of the 2024 legislative session.

B. Case Law

Rhode Island is an at-will jurisdiction. Employees “who are hired for an indefinite period with no contractual right to continued employment are [considered] at-will employees subject to discharge at any time for any permissible reason or for no reason at all.” *DeSignore v. Providence Journal Co.*, 691 A.2d 1050, 1051 n.5 (R.I. 1997). In general, Rhode Island courts have required clear evidence that the parties intended to enter into a contract of employment in order for the presumption of employment at-will to be overcome. See *Haviland v. Simmons*, 45 A.3d 1246 (R.I. 2012).

II. EXCEPTIONS TO AT-WILL EMPLOYMENT

A. Implied Contracts

1. Employee Handbooks/Personnel Materials

In *Neri v. Ross-Simons, Inc.*, 897 A.2d 42 (R.I. 2006), the plaintiff brought an action against her former employer for breach of employment contract and age and gender discrimination. *Id.* at 45. With respect to her breach of employment contract claim, the plaintiff alleged that the employer’s handbook granted to her a contractual right to displace less senior employees in the event of a reduction in force. *Id.* at 46-47. The Superior Court dismissed the plaintiff’s breach of contract claim, relying on our Supreme Court’s decision in *Roy v. Woonsocket Institution of Savings*, 525 A.2d 915 (R.I. 1987). *Id.* at 47. In *Roy*, the Rhode Island Supreme Court declined to adopt the doctrine that employee handbooks and personnel

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policies may give rise to implied contractual rights in employees. *Id.* One of the reasons why the *Roy* Court declined to adopt this doctrine was that “[t]he [employer’s] handbook and manual specifically provided that the policies stated therein could be altered or revoked by the [employer] at any time and for any reason . . . [I]f an employer notifies its employees that its policies are subject to unilateral change, the employees can have no legitimate expectation that any particular policy will remain in force.” *Neri*, 897 A.2d at 47 (citing *Roy*, 525 A.2d at 918.). Ultimately, the *Neri* Court concluded that the motion justice correctly applied the law set forth in *Roy* in dismissing the plaintiff’s breach of employment contract claim. *Id.* at 48.

2. Provisions Regarding Fair Treatment

Many employers have adopted progressive discipline policies as a means of ensuring fairness and consistency in the disciplinary process. Such a policy was addressed in *Bucci v. Hurd Buick Pontiac*, 85 A.3d 1160 (R.I. 2014), wherein the Rhode Island Supreme Court addressed an age discrimination claim brought by a 72-year old former employee who claimed that the legitimate, non-discriminatory reasons for her termination were pre-textual. The plaintiff pointed to the fact that her former employer did not follow its own employment termination policies in its employee handbook. *Id.* at 1175. The *Bucci* Court found the plaintiff’s argument unpersuasive, as it was undisputed that her employment was at-will and could be terminated with or without cause at any time. *Id.* The handbook in question made clear that the use of progressive discipline was within the employer’s discretion. *Id.* The *Bucci* Court cited with approval several cases that hold that an employer’s failure to follow progressive discipline does not constitute pretext when the implementation of the policy is discretionary and the plaintiff is an at-will employee.

3. Disclaimers

In *Roy v. Woonsocket Institution for Savings*, 525 A.2d 915 (R.I. 1987), the Rhode Island Supreme Court declined to decide whether it should adopt the doctrine that “handbooks and personnel policies may give rise to contract rights in certain circumstances.” *Id.* at 918. The *Roy* Court then proceeded, however, to provide several reasons why, even if the Court adopted the implied contract doctrine, no employment contract would arise in that case. *Id.* The Court focused on the fact that “[t]he employer’s handbook and manual specifically provided that the policies stated therein could be altered or revoked by the [employer] at any time and for any reason. Thus, it cannot be said that [the employee] should have relied on any statements in the [employer’s] handbook or manual. . . .” *Id.* Applying *Roy* in subsequent cases, the Rhode Island Supreme Court has held that an employer is not required to make a severance payment to a terminated employee where the handbook in question reserves the employer’s right to revise its policies. See *D’Oliveira v. Rare Hospitality International, Inc.*, 840 A.2d 538, 541 (R.I. 2004); see also *DeSignore v. Providence Journal Co.*, 691 A.2d 1050, 1052 (R.I. 1997) (citing *Roy* for proposition that an employee’s implied contract theory could not survive summary judgment because the employee “has not directed us to anything in the defendant’s policies, practices, procedures, or employee memoranda that would give rise to a reasonable belief that he was anything other than an at-will employee.”).

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4. Implied Covenant of Good Faith and Fair Dealing

It is “firmly established . . . in Rhode Island that a contract to render personal services to another for an indefinite term is terminable at the will of either party at any time for any reason or no reason at all.” *Roy v. Woonsocket Institution for Savings*, 525 A.2d 915, 917 (R.I. 1987). Thus, an implied covenant of good faith and fair dealing is generally not recognized in the at-will employment context under Rhode Island law. See *Lopez v. Bulova Watch Co., Inc.*, 582 F. Supp. 755, 767 n. 19 (D.R.I. 1984).

B. Public Policy Exceptions

1. General

Rhode Island employees may avail themselves of a number of statutorily-created rights. Many of the statutes that confer these rights also prohibit employers from retaliating against employees who exercise said rights. The following Rhode Island statutes limit the right of an employer to terminate an otherwise at-will employee: (1) Rhode Island Whistleblowers’ Protection Act, G.L. 1956 §28-50-1 et seq. (protects at-will employees who report violations of law, participate in investigations, and refuse to violate law); (2) Rhode Island Fair Employment Practices Act, G.L. 1956 §28-5-7(1)(v) (protects at-will employees who make internal complaints of harassment or discrimination); Rhode Island Minimum Wage Act, G.L. 1956 §28-12-16 (protects at-will employees who file wage complaints or testify in wage proceedings); False Claims Act, G.L. 1956 §9-1.1-4(g) (protects at-will employees who stop or attempt to stop violations of the Act); Division of Occupational Safety and Division of Occupational Health, G.L. 1956 §§28-20-21(b) and 23-1.1-14(b) (protect at-will employees who file complaints with Division of Occupational Safety and Division of Occupational Health); Rhode Island Civil Rights Act, G.L. 1956 §42-112-1 et seq. (protects at-will employees from retaliation on basis of race, color, religion, sex, disability, age, or national origin).

2. Exercising a Legal Right

See Section II(B)(1) above.

3. Refusing to Violate the Law

See Section II(B)(1) above.

4. Exposing Illegal Activity (Whistleblowers)

Several Rhode Island statutes expressly prohibit an at-will employer from retaliating against an employee for engaging in protected activity. To establish a prima facie case of retaliation/whistleblowing, the employee must establish that: (1) he or she engaged in protected conduct; (2) he or she experienced an adverse employment action; and (3) there was a causal connection between the protected conduct and the adverse employment action. See *Shoucair v. Brown University*, 917 A.2d 418, 427 (R.I. 2007). Once the plaintiff makes out a prima facie case, Rhode Island courts utilize the familiar burden-shifting framework of *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792 (1973). Specific examples of legally protected conduct in Rhode Island include filing a complaint with the Rhode Island Commission for

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Human Rights, *see State v. R.I. Commission for Human Rights*, 2014 WL 10447226 (R.I. Super. 2014); participating or assisting an investigative proceeding under the Fair Employment Practices Act, *see American Legion Post 12 v. Susa*, 2005 WL 3276210 (R.I. Super. 2005); filing a complaint or reporting wrongdoing to one's manager or supervisor, *see Chapman v. R.I. Veterans Home*, 2001 WL 36410316 (R.I. Super. 2001); stating opposition to discriminatory interview practices, *see Shoucair v. Brown University*, 917 A.2d 418, 426 (R.I. 2007); seeking an accommodation for pregnancy, childbirth, and related medical issues, *see Wellborn v. Spurwink*, 873 A.2d 884, 888 (R.I. 2005); and taking a medical leave, *see DeCamp v. Dollar Tree Stores, Inc.*, 875 A.2d 13, 22 (R.I. 2005). The Rhode Island Supreme Court has identified the following as examples of adverse employment actions in the whistleblower context: constructive discharge of an employee, *see Wellborn v. Spurwink*, 873 A.2d 884, 889 (R.I. 2005); denial of tenure, *see Shoucair v. Brown University*, 917 A.2d 418, 428 (R.I. 2007); bypassing an employee for a promotion, *see Wellborn, supra.*; forcing an employee to take a premature maternity leave, *see Wellborn, supra.* The Rhode Island Supreme Court also has weighed in on conduct that does not constitute an adverse employment action. *See Russo v. Department of Mental Health, Retardation & Hospitals*, 87 A.3d 399 (R.I. 2014) (employer's decision to place employee on paid administrative leave and require independent medical examination not an adverse employment action).

III. CONSTRUCTIVE DISCHARGE

Rhode Island recognizes a cause of action for constructive discharge. To determine whether an actionable constructive discharge has occurred, the trier of fact must be satisfied that the employee's new working conditions would have been so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign. The court's inquiry "naturally focuses on the reasonable state of mind of the assumed discriminatee . . . and requires proof of more than the usual workplace stress." *Wellburn v. Spurwink*, 873 A.2d 884, 891 (R.I. 2005).

IV. WRITTEN AGREEMENTS

A. Standard "For Cause" Termination

In *New England Stone, LLC v. Conte*, 962 A.2d 30 (R.I. 2009), a terminated employee argued that when an employer may fire an employee only "for cause," the employer must have a good faith belief, supported by substantial evidence, that the employee engaged in prohibited conduct. *Id.* at 33. The defendant employee urged the Rhode Island Supreme Court to adopt an objective good faith standard used in other jurisdictions, specifically as articulated by the Supreme Court of California in *Cotran v. Rollins Hudig Hall International, Inc.*, 948 P.2d 412 (1998). *Id.* The *Cotran* Court stated that a termination "for cause" must be based on "fair and honest reasons, regulated by good faith on the part of the employer, that are not trivial, arbitrary or capricious, unrelated to business needs or goals, or pre-textual." *Id.* (citing *Cotran*, 948 P.2d at 422.). The *Cotran* Court further stated that the employer's decision must be "supported by substantial evidence gathered through an adequate investigation that includes notice of the claimed misconduct and a chance for the employee to respond." *Id.* The Rhode Island Supreme Court declined to follow *Cotran*. Instead, the Court reaffirmed the at-will employment doctrine and refused "to create additional and implied terms to govern the [employment] relationship as

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a matter of law.” *Id.* The Court enforced the defendant’s employment agreement as written and upheld his termination. *Id.*

B. Status of Arbitration Clauses

Rhode Island law clearly favors the enforcement of arbitration clauses as a means of settling contractual disputes. See G.L. 1956 §10-3-2 (“When clearly written and expressed, a provision in a written contract to settle by arbitration a controversy thereafter arising out of such contract, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between two (2) or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract[.]”); see also *Bush v. Nationwide Mut. Ins. Co.*, 448 A.2d 782, 784 (R.I. 1982) (where parties agree in clear language to settle contractual disputes through arbitration, court will enforce agreement to arbitrate).

V. ORAL AGREEMENTS

A. Promissory Estoppel

To establish promissory estoppel, there must be: (1) a clear and unambiguous promise; (2) reasonable and justifiable reliance upon the promise; and (3) detriment to the promisee caused by his or her reliance on the promise. *Filippi v. Filippi*, 818 A.2d 608 (R.I. 2003).

B. Fraud

The elements of common law fraud in Rhode Island are: (1) a false or misleading statement of material fact; (2) known by the defendant to be false; and (3) made with intent to deceive; and (4) upon which the plaintiff relies to his or her detriment. *Zarella v. Minnesota Mut. Life Ins. Co.*, 1999 WL 226223 (R.I. Super. 1999).

C. Statute of Frauds

Rhode Island’s statute of frauds is set forth in G.L. 1956 §9-1-4. This statute provides that the following types of contracts are within the statute of frauds and must be in writing to be enforceable: (1) contracts for the sale of land; (2) leases for more than one year; (3) agreements made upon consideration of marriage; (4) agreements by a trustee or executor to pay debts or damages; (5) promises to answer for the debt or default of another; (6) agreements that cannot be performed within one year; (7) agreements to pay commission on the sale of real estate; (8) contracts for the sale of goods for a price of more than \$5,000.

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VI. DEFAMATION

A. General Rule

1. Libel

To prevail on a claim of libel under Rhode Island law, the plaintiff must prove: (1) a false and defamatory statement concerning another; (2) an unprivileged communication to a third party; (3) fault amounting to at least negligence; and (4) damages. *Kilgore v. Providence Place Mall*, 2016 WL 3092990 (D.R.I. 2016).

2. Slander

To prevail on a claim of slander under Rhode Island law, the plaintiff must prove: (1) a false and defamatory statement concerning another; (2) an unprivileged communication to a third party; (3) fault amounting to at least negligence; and (4) damages. *Trainor v. The Standard Times*, 924 A.2d 766 (R.I. 2007).

B. References

Rhode Island recognizes a qualified privilege applicable to statements made by employers regarding a current or former employee's job performance to other prospective employers. G.L. 1956 §28-6.4-1(c). Employers that, upon request by a prospective employer or a current or former employee, provide fair and unbiased information about a current or former employee's job performance are presumed to be acting in good faith and are immune from civil liability for the disclosure and the consequences of the disclosure. This presumption of good faith is rebuttable upon a showing by a preponderance of the evidence that the information disclosed was: (1) knowingly false; (2) deliberately misleading; (3) disclosed for a malicious purpose; or (4) in violation of the employee's rights under the employment discrimination laws in effect at the time of the disclosure. The employee bears the burden of establishing the type of ill will necessary to overcome this qualified privilege. *See Kevorkian v. Glass*, 913 A.2d 1043, 1051 (R.I. 2007).

C. Privileges

Under the judicially created doctrine of qualified privilege, "a qualified privilege exists if the publisher makes the statements in good faith and reasonably believes that he [or she] has a legal, moral, or social duty to speak out, or that to speak out is necessary to protect either his [or her] own interests, or those of third person[s], or certain interests of the public." *Mills v. C.H.I.L.D., Inc.*, 837 A.2d 714, 720 (R.I. 2003). In *Swanson v. Speidel Corp.*, 110 R.I. 335, 340, 293 A.2d 307, 310 (1972), the Rhode Island Supreme Court held that a former employer's communication to a prospective employer with regard to the work characteristics of a former employee was protected by a qualified privilege.

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D. Other Defenses

1. Truth

Truth is a complete defense in an action for defamation, no matter how much harm is done by the statements. *Healey v. New England Newspapers, Inc.*, 555 A.2d 321 (R.I.1989).

2. No Publication

An unprivileged communication to a third party is an essential element of a cause of action for defamation. If the statements in question are not published, there can be no liability for defamation. *See* Am. Jur. *Libel* §223.

3. Self-Publication

There are no reported Rhode Island cases on the issue of self-publication.

4. Invited Libel

There are no reported Rhode Island cases on the issue of invited libel.

5. Opinion

In *Leddy v. Narragansett Television*, 843 A.2d 481 (R.I. 2004), the Rhode Island Supreme Court addressed the defense of “fair comment” in defamation actions. This defense affords legal immunity to the honest expression of opinions on matters of legitimate public interest when such opinions are based upon true statements of fact. *Id.* at 488. The “fair-comment” defense can be overcome if the plaintiff can prove, with convincing clarity, that the defendants acted with actual malice—that is, with knowledge that the challenged statement was false or with reckless disregard for its truth. *Id.* (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964)).

E. Job References and Blacklisting Statutes

See Section VI(B) above.

F. Non-Disparagement Clauses

There are no reported Rhode Island cases addressing the validity / enforceability of non-disparagement clauses.

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VII. EMOTIONAL DISTRESS CLAIMS

A. Intentional Infliction of Emotional Distress

In order to prevail on a claim of intentional infliction of emotional distress, the plaintiff is required to prove extreme and outrageous conduct that intentionally or recklessly resulted in causing severe emotional distress. *See Reilly v. United States*, 547 A.2d 894 (R.I. 1988). In Rhode Island, a plaintiff must prove physical symptomatology resulting from the alleged improper conduct. *Id.* at 898.

B. Negligent Infliction of Emotional Distress

In order to recover for negligent infliction of emotional distress, a party must: (1) be a close relative of the victim; (2) be present at the scene of the accident and be aware that the victim is being injured; and (3) as a result of experiencing the accident, suffer serious emotional injury that is accompanied by physical symptomatology. Absent these three elements, a plaintiff who seeks to recover for emotional distress arising out of an injury to a relative may not recover for negligent infliction of emotional distress. *See Marchetti v. Parsons*, 638 A.2d 1047 (R.I. 1994).

VIII. PRIVACY RIGHTS

A. Generally

Rhode Island does not recognize a common law claim for invasion of privacy. *Clift v. Narragansett Television, LP*, 688 A.2d 805, 814 (R.I. 1996). However, the Rhode Island General Assembly has enacted two statutes creating privacy rights. The first, G.L. 1956 §9-1-28, provides a cause of action for the unauthorized commercial use of one's name, portrait, or picture. Damages, including treble damages, may be available to a prevailing plaintiff. *See* §9-1-28(a). The second statute, G.L. 1956 §9-1-28.1, creates a broader right of privacy. This statute recognizes four privacy rights set forth in the *Restatement (Second) of Torts*: (1) the right to be secure from unreasonable intrusion upon one's physical solitude or seclusion; (2) misappropriation of one's name or likeness; (3) unreasonable publication of private facts; and (4) placing one in a false light before the public. Add section here.

B. New Hire Processing

1. Eligibility Verification and Reporting Procedures

In 2008, then-Rhode Island Governor Donald Carcieri issued an executive order requiring all employers in the state to enroll in the E-Verify program. This executive order subsequently was rescinded in January 2011 by his successor, then-Governor Lincoln Chaffee. At this time, Rhode Island employers are not required to enroll in the E-Verify program.

2. Background Checks

Rhode Island law prohibits employers from requesting or requiring that applicants provide tax information. G.L. 1956 §28-6.9-1. If this statute is violated, the court may award the prevailing party

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punitive damages as well as attorney's fees and costs. See §28-6.9-2. Rhode Island has enacted a "mini-Fair Credit Reporting Act" statute that tracks the requirements of the federal statute. The Rhode Island law prohibits an employer from requesting a credit report in connection with an application for employment, unless the applicant is first informed that a credit report may be required in connection with the application. G.L. 1956 §6-13.1-21(a). If employment is denied based in whole or in part on the contents of a credit report, the employer must advise the applicant and provide the name and address of the credit bureau making the report. G.L. 1956 §6-13.1-21(b). Effective January 1, 2014, Rhode Island enacted a "ban the box" law that prohibits employers from inquiring about prior criminal convictions in the initial job application. Section 28-5-7(7) makes it an unlawful employment practice for any employer with four (4) or more employees to "include on any application for employment . . . a question inquiring or to otherwise inquire orally or in writing whether the applicant has ever been arrested, charged with, or convicted of a crime." Rhode Island's ban the box law allows employers to ask an applicant about criminal convictions at the first interview or thereafter.

C. Specific Issues

1. Workplace Searches

Private employers are free to search the person, workspace, and belongings of their employees, provided that workplace searches are conducted in a non-discriminatory manner. Particularly egregious searches may subject the employer to tort liability for assault, false imprisonment, or intentional infliction of emotional distress.

2. Electronic Monitoring

Unauthorized access to employee e-mail and social media accounts can give rise to an invasion of privacy claim under G.L. 1956 §9-1-28.1. In *Williams v. Stoddard*, 2015 WL 644200 (R.I. Super. 2015), a justice of the Rhode Island Superior Court held that "individuals have an objectively reasonable expectation of privacy in their password-protected electronic communications and other online activity." *Id.* at 14. The court in *Williams* further held that "ownership of the computer is of no import" in determining whether there has been an invasion of privacy claim, because it is the electronic communication and online activity that gives right to the privacy right. *Id.* at 13. To date, the Rhode Island Supreme Court has yet to take up the issue of whether employers have the right to access and inspect e-mails and files stored on the employer's computers, networks, and e-mail systems.

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3. Social Media

In 2014, Rhode Island enacted legislation concerning employer access to employee social media accounts and passwords. The statute prohibits employers from engaging in a variety of activities relating to social media accounts, including requiring an employee or applicant to: (1) disclose his or her password or any other means of accessing a personal social media account; (2) access his or her social media account in the employer's presence; or (3) divulge any personal social media account information. G.L. 1956 §28-56-2. An employer may, however, request such information if the employer reasonably believes that the information is relevant to a workplace investigation of employee misconduct or violation of law. *See id.* In addition to prohibiting employer access to password and account information, the statute also prohibits an employer from compelling an employee or applicant to "friend" / add anyone to his or her contacts list associated with his or her social media account or cause the employee or applicant to change his or her privacy settings. *See* §§28-56-2 and 28-56-3. Finally, the statute makes it unlawful to discipline, discharge, or otherwise penalize an employee for refusing to disclose or provide access to a social media account, refusing to add the employer to his or her contacts, or refusing to alter privacy settings. *See* §28-56-4. It is important to note that the statute applies only to social media accounts that are personal to the employee. The statute does not apply to social media accounts opened at the employer's request, provided by an employer to its employees, or intended to be used primarily on behalf of the employer. *See* §28-56-1.

4. Taping of Employees

Rhode Island is a one-party consent jurisdiction with respect to wiretaps. This means that it is not a violation of Rhode Island law for a person to "intercept a wire, electronic, or oral communication, where the person is a party to the communication, or one of the parties to the communication has given prior consent to the interception." *See* G.L. 1956 §11-25-21(c)(3). The one-party consent rule applies unless the communication is intercepted for the purpose of committing a criminal or tortious act in violation of any federal or state law. *See id.*

5. Release of Personal Information

See Section VIII(A) above.

6. Medical Information

The Rhode Island Confidentiality of Health Care Communications and Information Act, G.L. 1956 §5-37.3-1 et seq., "establish[ed] safeguards for maintaining the integrity of confidential health care information that relates to an individual." *See* §5-37.3-2. Among other things, the Act prohibits the disclosure of health care information without a patient's consent except in certified specified situations. *See* §5-37.3-4. The Rhode Island Supreme Court has held that the Act does not apply when an individual provides health care information directly to his or her employer. *See Trembley v. Central Falls*, 480 A.2d 1359 (R.I. 1984).

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7. Restrictions on Requiring Salary History

There is currently no Rhode Island statute or case law prohibiting an employer from inquiring into a prospective employee's salary or wage history. However, there is proposed legislation that, if passed, would Prohibit an employer from inquiring about a prospective employee wage and salary history before an offer of employment with compensation has been negotiated.

IX. WORKPLACE SAFETY

A. Negligent Hiring, Negligent Supervision / Retention

In *Welsh Mfg., Div. Of Textron, Inc. v. Pinkerton's, Inc.*, 474 A.2d 436 (R.I. 1984), the Rhode Island Supreme Court addressed as a matter of first impression the tort of negligent hiring. "[A]n action for negligent hiring provides a remedy to injured third parties who would otherwise be foreclosed from recovery under the master-servant doctrine since the wrongful acts of employees in these cases are likely to be outside the scope of employment or not in furtherance of the master's business." *Id.* at 439. The *Welsh Mfg.* Court went on to recognize that "the tort of negligent hiring addresses the risk created by exposing members of the public to a potentially dangerous [or dishonest] individual, while the doctrine of respondeat superior is based on the theory that the employee is the agent or is acting for the employer. Therefore, the scope of employment limitation on liability which is a part of the respondeat superior doctrine is not implicit in the wrong of negligent hiring." *Id.* at 440. "[T]he liability of an employer in the negligent supervision . . . of an unfit employee is an entirely separate and distinct basis from the liability of an employer under the doctrine of respondeat superior." *Mainella v. Staff Builders Indus. Serv.*, 608 A.2d 1141, 1145 (R.I. 1992). In an action for negligent supervision, the plaintiff must prove that the defendant failed to exercise such care in supervision as would protect against dangers reasonably foreseeable. *See Ephremian v. Sholes*, 52 A.2d 425, 427-428 (R.I.1947).

B. Interplay with Workers' Comp Bar

Section 28-29-20 of the Rhode Island General Laws provides as follows: "The right to compensation for an injury under chapters 29-38 of this title, and the remedy therefor granted by those chapters, shall be in lieu of all rights and remedies as to that injury now existing, either at common law or otherwise against an employer, or its directors, officers, agents, or employees; and those rights and remedies shall not accrue to employees entitled to compensation under those chapters while they are in effect, except as otherwise provided in §§ 28-36-10 and 28-36-15." The policies and purposes underlying this exclusivity provision have been made clear in a number of cases. For example, in *Cacchillo v. H. Leach Machinery Co.*, 305 A.2d 541 (R.I.1973), the Rhode Island Supreme Court reiterated that § 28-29-20 was clearly intended to preclude any common-law action against an employer, substituting a statutory remedy at the election of the employee when he enters employment. *Id.* at 595-96, 305 A.2d at 543. The act abolished the employee's right to a common-law action, and deprived the employer of certain common-law defenses, in order to provide a simple and expeditious procedure by which an employee would receive compensation from his or her employer for injuries sustained in a work-related accident. *See Mustapha v. Liberty Mutual Insurance Co.*, 268 F. Supp. 890, 892 (D.R.I. 1967).

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C. Firearms in the Workplace

Rhode Island has no statutory or case law prohibition against the possession of firearms in the workplace.

D. Use of Mobile Devices

Pursuant to G.L. 1956 §31-22-30, it is unlawful to use a cellular phone to compose, read, or send a text message while driving.

X. TORT LIABILITY

A. Respondeat Superior Liability

The law in Rhode Island with respect to the vicarious liability of a principal for the intentional torts of an agent is well established. An employer, in the absence of a statute to the contrary, is generally not responsible for a willful assault by an employee, unless it is committed while performing a duty in the course of his or her employment and by express or implied authority from the employer. *Labossiere v. Sousa*, 143 A.2d 285 (R.I.1958). A plaintiff may, however, in a proper case, imply such authority to an employer so as to hold the employer liable even though the act is one specifically forbidden by the employer or is in violation of law. *Labossiere*, 143 A.2d at 287. The doctrine of respondeat superior would hold the master liable when the nature of the employee's duty is such that "its performance would reasonably put the employer on notice that some force probably may have to be used in executing it." *Id.*

B. Tortious Interference with Business / Contractual Relations

To recover on a claim of intentional interference with prospective advantage, a plaintiff must show (1) the existence of a business relationship or expectancy, (2) knowledge by the interferer of the relationship or expectancy, (3) an intentional [and improper] act of interference, (4) proof that the interference caused the harm sustained, and (5) damages to the plaintiff. *Beauregard v. Gouin*, 66 A.3d 489 (R.I. 2013). The basic elements of a claim based on a tortious interference with a contractual relationship are (1) the existence of a contract; (2) the alleged wrongdoer's knowledge of the contract; (3) his intentional interference; and (4) damages resulting therefrom. *Jolicoeur Furniture Co., Inc. v. Baldelli*, 653 A.2d 740 (R.I. 1995).

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XI. RESTRICTIVE COVENANTS/ NON-COMPETITION AGREEMENTS

A. General Rule

The Rhode Island Supreme Court has long subscribed to the general principle that non-competition agreements are not necessarily void as a matter of law. *Oakdale Manufacturing Co. v. Garst*, 28 A. 973, 974-75 (R.I.1894). However, since such provisions are disfavored, they are subject to judicial scrutiny and will be enforced as written only if the contract is reasonable and does not extend beyond what is apparently necessary for the protection of those in whose favor it runs. *See Koppers Products Co. v. Radio*, 197 A. 441, 444-45 (R.I.1938). When considering the validity of a non-competition agreement, the crucial issue is reasonableness, and that test is dependent upon the particular circumstances surrounding the agreement. *Max Garelick, Inc. v. Leonardo*, 250 A.2d 354, 356-57 (R.I.1969).

B. Blue Penciling

In *Durapin v. American Products, Inc.*, 559 A.2d 1051 (R.I. 1989), the Rhode Island Supreme Court gave its stamp of approval to the practice of “blue penciling” restrictive covenants. The *Durapin* Court stated as follows: “We believe this is the appropriate time to choose the route that permits unreasonable restraints to be modified and enforced, whether or not their terms are divisible, unless the circumstances indicate bad faith or deliberate overreaching on the part of the promisee.” *Id.* at 1058.

C. Confidentiality Agreements

Rhode Island has adopted the model Uniform Trade Secrets Act, G.L. 1956 §6-41-1 et seq. Generally, this statute provides that misappropriation of a trade secret may result in injunctive relief and an award of money damages. Unlike neighboring Massachusetts, Rhode Island takes a broad view of what constitutes a “trade secret.” *See* §6-41-1. Unlike Massachusetts, Rhode Island does not require a trade secret to be closely tied to a secret scientific, technical, merchandising, production, design, process, procedure, formula, invention, or improvement. In addition to the Trade Secrets Act, Rhode Island courts have recognized that confidential and proprietary business information is protected at common law and, as such, former employees are duty-bound not to use or disclose such information to third parties. *See J.B. Prata, Ltd. v. Bichay*, 468 A.2d 266 (R.I. 1983). It is well-settled in Rhode Island that confidential and proprietary customer lists and information are worthy of protection by means of an injunction. *See Rego Displays, Inc. v. Fournier*, 379 A.2d 1098 (R.I.1977).

D. Trade Secrets Statute

See Section IX(C) above.

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E. Fiduciary Duty and their Considerations

In *Long v. Atlantic PBS, Inc.*, 681 A.2d 249 (R.I. 1996), the Rhode Island Supreme Court addressed the scope of the fiduciary duty owed by a former employee to his or her former employer. The *Long* Court noted that, in the absence of an enforceable non-competition agreement, former employees can solicit their former employer's customers for business, so long as, in doing so, they do not tortiously interfere with the former employer's contracts, misappropriate trade secrets, or convert confidential business information. *Id.* at 253.

XII. DRUG TESTING LAWS

A. Public Employers

Public employers may not avail themselves of the pre-employment drug testing rules set forth in G.L. 1956 §28-6.5-1 et seq. except with respect to an applicant seeking employment as a law enforcement or correctional officer, firefighter, or any other position in which testing is required by federal law in order to receive federal funds. See §28-6.5-2(b).

B. Private Employers

G.L. 1956 §28-6.5-1 prohibits employers from requesting or requiring an employee to submit a sample of his or her urine, blood, or other bodily fluid or tissue for testing as a condition of continued employment unless the test is administered in accordance with §28-6.5. The statute, which one court described as having imposed "complex responsibilities and requirements on employers," *Alves v. Cintas Corp.*, 2013 WL 3722200 (R.I. Super. 2013), authorizes employers to require the testing of a specific employee if the following eight conditions are met: (1) the employer must have reasonable grounds, based on specific aspects of the employee's job performance and specific, contemporaneous, documented observations of the employee's appearance, behavior, or speech to believe that the employee may be impaired; (2) the employee must provide the sample in private, outside the presence of any other person; (3) if the employee tests positive, he or she must be referred to a licensed substance abuse professional for assistance and may only be terminated if further testing reveals the continued presence of controlled substances despite treatment; (4) any positive test must be confirmed by a federally certified laboratory; (5) the employer must provide the test to the employee and, at the employer's expense, provide the opportunity to have the sample tested by an independent facility; (6) the employer must provide the results to the employee with a reasonable opportunity to rebut or explain the results; (7) the employer must have promulgated a drug abuse prevention policy that complies with §28-6.5; and (8) the employer must keep the results of all tests confidential, except that the employer may disclose the results of a positive test to other employees who have a job-related need to know the results. There is a different set of drug testing rules for applicants for employment. G.L. 1956 §28-6.5-2 provides that private employers may require a job applicant to submit to testing if: (1) the applicant has been given an offer of employment conditioned upon receiving a negative test result; (2) the applicant provides the test sample in private; and (3) any positive test is confirmed by a federally certified laboratory.

XIII. STATE ANTI-DISCRIMINATION LAWS**A. Employers / Employees Covered**

The Rhode Island Fair Employment Practices Act (hereinafter “FEPA”), found at G.L. 1956 §28-5-1 et seq., provides broader protection than Title VII. It applies to all employers with four (4) or more employees, whereas Title VII applies only to employers with fifteen (15) or more employees. See §28-5-6(8)(i).

B. Types of Conduct Prohibited

FEPA prohibits discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity / expression, disability, age, and country of national origin. It also makes it illegal for employers, prior to employment, to elicit information, make a record of, or use any form of application that includes inquiries pertaining to protected class, except where a bona fide occupational qualification (BFOQ) exists or where necessary to comply with a federal affirmative action program. See §28-5-7(4). Finally, FEPA makes it unlawful to include on an employment application or otherwise inquire whether an applicant has been arrested, charged, or convicted of a crime. Applicants may be asked about criminal convictions at the first interview or thereafter. See §28-5-7(7)(iii).

C. Administrative Requirements

Those who want to file a charge of discrimination with the Rhode Island Commission for Human Rights must do so within one (1) year of the time the alleged unlawful employment practices have occurred, terminated, or have been applied to affect the person aggrieved. See §28-5-17. Under FEPA, the complainant may request a right to sue in state court not less than 120 days and not more than two (2) years from the date of filing. Following a probable cause finding, either party may request a right to sue in Superior Court. See §28-5-24.1.

D. Remedies Available

FEPA provides for injunctive relief (e.g. hiring, reinstatement, promotion, with or without back pay and interest), compensatory damages where the employer has engaged in intentional conduct (i.e. any unlawful conduct other than disparate impact), attorney’s fees and costs, and punitive damages where the discriminatory conduct is “motivated by malice or ill will or when the action involves reckless or callous indifference to the statutorily protected rights of others.” See §§8-5-24 and 28-5-29.1. In light of the Rhode Island Supreme Court’s recent decision in *Mancini v. City of Providence*, 2017 WL 924178 (R.I. Super. 2017), employees of a respondent employer cannot be found individually liable under FEPA.

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XIV. STATE LEAVE LAWS

A. Jury / Witness Duty

Section 9-9-28 provides that employers are generally not required to compensate employees for the performance of jury service. However, the employee may not lose his or her position, wage increases, promotions, longevity benefits, or any other employment benefits.

B. Voting

Rhode Island law does not require employers to provide leave, paid or unpaid, for employees to vote.

C. Family / Medical Leave

The Rhode Island Parental and Family Medical Leave Act, G.L. 1956 § 28-48-1 et seq., provides up to thirteen (13) weeks of job-protected leave to qualified employees. To be eligible for leave under the Act, the employee must have worked for the employer for at least twelve (12) consecutive months and averaged at least thirty (30) hours per week prior to the effective date of the leave. Like its federal counterpart, leave may be taken for the following reasons: (1) the birth of a child; (2) the placement with the employee of a child for adoption or foster care; (3) to care for the employee's spouse, same-sex domestic partner, child, or parent who has a serious health condition; (4) the employee's own serious health condition; (5) any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty; (6) to care for a covered service-member with a serious injury or illness if the eligible employee is the service-member's spouse, son, daughter, parent, or next of kin. Leave under the Act is job-protected, meaning that the employee returning from leave will be restored to his or her original or an equivalent position.

D. Pregnancy / Maternity / Paternity Leave

The Rhode Island PFMLA requires companies with fifty (50) or more employees to grant medical leaves of absence to eligible employees suffering from pregnancy-related conditions or employees caring for newborn children. Employees who meet the requirements for benefits under the Rhode Island Temporary Disability Act may also be eligible for temporary disability insurance (TDI) for up to thirty (30) weeks in a benefit year in a case of pregnancy-related conditions, and temporary caregiver insurance (TCI), a caregiver benefit for up to four (4) weeks in a benefit year to take time off from work to care for a seriously ill child or to bond with a new child. TDI/TCI benefits include wage replacement benefits, right to reinstatement, and continuation of medical insurance coverage.

E. Day of Rest Statutes

It is up to employers to determine which holidays will be provided to both its at-will employees and executives subject to employment agreements. An employer requiring its non-exempt employees to work on the following holidays must pay them at least one and one-half (1 ½) times the normal rate of pay: New Year's Day (January 1); Memorial Day (Last Monday in May); Independence Day (July 4); Victory

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Day (Second Monday in August); Labor Day (First Monday in September); Columbus Day (Second Monday in October); Veterans' Day (November 11); Thanksgiving Day (Fourth Thursday in November); and Christmas Day (December 25). If a holiday falls on a Sunday, the day following is observed as the legal holiday for state employees. Depending on the company, employers often close on these holidays. If they remain open and operating, however, exempt employees are not entitled to additional compensation.

F. Military Leave

Employers may not discharge or otherwise discriminate against employees because they are members of the military or reserves. It is also unlawful for an employer to hinder or prevent an employee from performing military duty when ordered to do so. See G.L. 1956 §§30-11-2, 30-11-6, and 30-11-9. Employers who violate these statutes may be guilty of a misdemeanor.

G. Sick Leave

All employees employed by an employer of eighteen (18) or more employees in Rhode Island shall accrue a minimum of one hour of paid sick and safe leave time for every thirty-five (35) hours worked up to a maximum of thirty-two (32) hours during calendar year 2019 and up to a maximum of forty (40) hours per year thereafter, unless the employer chooses to provide a higher annual limit in both accrual and use. See G.L. 1956 §28-57-5(a). Paid sick and safe leave begins to accrue at the commencement of employment. An employer may provide all paid sick and safe leave time that an employee is expected to accrue in a year at the beginning of the year. An employer may require a waiting period for newly hired employees of up to ninety (90) days, during which time the employee shall accrue sick time but shall not be permitted to use the sick time until the end of the waiting period. Paid sick and safe leave time shall be carried over to the following calendar year. However, in lieu of carryover of unused earned paid sick time from one year to the next, an employer may pay an employee for unused time at the end of a year. When a different employer succeeds or takes the place of an existing employer, employees of the original employer who remain employed by the successor employer within the state are entitled to all earned paid sick and safe leave time they accrued when employed by the original employer.

Employees are provided sick and safe leave time to tend to their own mental or physical health or a family member's mental or physical health. See G.L. 1956 §28-57-6(a). Employees may make the request to use paid sick and leave time orally, in writing, by electronic means or by any other means acceptable to the employer. When possible, the request shall include the expected duration of absence. For paid sick and safe leave time of more than three (3) consecutive workdays, an employer may require reasonable documentation that the paid sick and safe leave time has been used for a purpose recognized within G.L. 1956 §28-57-6(a).

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H. Domestic Violence Leave

Pursuant to G.L. 1956 §28-57-6(a)(4), an employee may use sick and safe leave time when the employee or a member of the employee's family is a victim of domestic violence, sexual assault or stalking. An employer may require documentation if the employee is requesting sick and safe leave time for more than three (3) consecutive days. However, the employer may not require that the documentation explain the details of the domestic violence, sexual assault or staking. Any one of the following shall be considered reasonable documentation: (1) an employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault, or staling and that the leave taken was for one of the purposes of §28-57-6(a)(4); (2) a police report indicating that the employee or employee's family member was a victim of domestic violence, sexual assault, or stalking; (3) a court document indicating that the employee or employee's family member is involved in legal action related to domestic violence, sexual assault or stalking; (4) a signed statement from a victim and witness advocate affirming that the employee or employee's family member is receiving services from a victim services organization or is involved in legal action related to domestic violence, sexual assault, or stalking.

I. Other Leave Laws

None.

XV. STATE WAGE AND HOUR LAWS

A. Current Minimum Wage in State

The current minimum wage in Rhode Island is \$14.00 per hour. See G.L. 1956 §28-12-3(n).

B. Deductions from Pay

Federal and Rhode Island law prohibit virtually all deductions from earned payroll payments, unless the affected employee has signed a prior written acknowledgment authorizing the particular deduction. Likewise, federal and state law generally prohibit or limit virtually all deductions from earned payroll payments that reduce the employee's gross pay below the minimum hourly wage rate in any particular pay period. See G.L. 1956 §§28-14-24 (prohibiting set-off or counterclaim for rent, damages, or debts in an action for unpaid wages); 28-14-8 (requiring payment of undisputed amounts when employer and employee are engaged in wage dispute); *Labor Ready N.E., Inc. v. McConaghy*, 849 A.2d 340 (R.I. 2004) (charging employees a small check cashing fee violates G.L. 1956 §28-14-2).

C. Overtime Rules

The primary provision of Rhode Island law governing payment of overtime is G.L. 1956 §28-12-4.1(a). This statute provides that "[n]o employer shall employ any person for a workweek longer than forty hours unless the employee is compensated at a rate of one and one half (1 ½) times the regular rate at which he or she is employed for all hours worked in excess of forty hours per week." This is subject to change; there is currently proposed legislation in the current Rhode Island Legislative Session to lower the

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workweek hours from forty (40) to thirty-two (32) hours. Exemptions to the Rhode Island overtime statute are set forth in §28-12-4.3. In addition to identifying a number of exemptions, the statute incorporates the Fair Labor Standards Act exemptions for “[a]ny employee employed in a bona fide executive, administrative, or professional capacity, . . . compensated for services on a salary basis of not less than \$200.00 per week.” Because the language used to define the overtime exemptions under §28-12-4.2 does not perfectly dovetail with the language used for the FLSA exemptions, employers must be prepared to prove that a particular exemption applies under both state and federal law.

D. Time for Payment upon Termination

The statutory requirements for payment upon termination are set forth in G.L. 1956 §28-14-4. Employees who have completed at least one (1) year of service are generally entitled to full or prorated payment for any vacation leave “awarded by collective bargaining, written or verbal company policy, or any other written or verbal agreement between employer and employee.” See §28-14-4(b).

E. Breaks and Meal Periods

Employees are entitled to a twenty (20) minute mealtime within a six (6) hour work shift, and a thirty (30) minute mealtime with an eight (8) hour work shift. Employers are not required to compensate an employee for this mealtime. This rule does not apply to: (a) an employer of a health care facilities licensed in accordance with chapter 23-17 of the general laws; or (b) an employer who employs less than three (3) people on any shift at the worksite. See G.L. 1956 §28-3-14.

F. Employee Scheduling Laws

None.

XVI. MISCELLANEOUS STATE STATUTES REGULATING EMPLOYMENT

A. Smoking in Workplace

Pursuant to G.L. 1956 §23-20.10-14, it is unlawful for an employer, as a condition of employment, to require any employee or prospective employee to refrain from smoking or using tobacco products outside the course of his or her employment, or to otherwise discriminate against any individual with respect to the terms and conditions of employment for smoking or using tobacco products outside the workplace. Employers are permitted to provide outdoor smoking areas for their employees, provided that the smoking area is physically separated from the workplace so as to prevent the migration of smoke into the workplace. See §23-20.10-5.

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B. Health Benefit Mandates for Employers

The federal Affordable Care Act imposes health benefit mandates on employers. However, in light of the effort currently underfoot in Congress to “repeal and replace” the Act, the nature and extent of those mandates is in flux.

C. Immigration Laws

Pursuant to G.L. 1956 §28-44-67, unemployment benefits “shall not be payable on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed[.]”

D. Right to Work Laws

Rhode Island is not a “right to work” state.

E. Lawful Off-duty Conduct

There are several Rhode Island cases involving the right of public employers to terminate employees for their off-duty conduct. These cases often involve unlawful conduct. *See, e.g., Department of Corrections v. Rhode Island Brotherhood of Correctional Officers*, 867 A.2d 823 (R.I. 2005); *Rhode Island Department of Children, Youth, and Families v. Rhode Island Council 94*, 713 A.2d 1250 (1998). It does not appear that the Rhode Island Supreme Court has yet addressed the issue of a termination of a private employee based on legal off-duty conduct, including the use of medical or recreational marijuana.

F. Gender / Transgender Expression

While Title VII does not offer protection from discrimination due to gender identity / expression, it is illegal under FEPA to discriminate against transgender individuals. *See* §28-5-7. FEPA defines gender identity or expression to include a person’s actual or perceived gender, as well as a person’s gender-related self-image, appearance, or expression is different from that “traditionally associated with the person’s sex at birth.” *See* §28-5-6(11).

G. Other Key State Statutes

1. Lie Detector Statutes

No employer or agent of any employer shall either orally or in writing request, require, or subject any employee to any lie detector tests as a condition of employment or continued employment. § 28-6.1-1. Any employer who subjects any person employed by him or her, or any person applying for employment, to a lie detector test, or causes, directly or indirectly, any employee or applicant to take a lie detector test, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000). § 28-6.1-2.

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H. Volunteer Activities and Reports

Any state employee who is a certified disaster volunteer of the American Red Cross may be granted leave work with pay for not more than ten (10) working days each calendar year to participate in specialized disaster relief service for the American Red Cross, upon the request of the American Red Cross through the state office of emergency management. Leave may be taken upon the request of the American Red Cross and upon the approval of the employee's supervisor, without loss of seniority, pay, vacation leave, compensatory time, personal business leave, sick leave, or earned overtime accumulation. The state agency may compensate an employee granted leave under this section at the employee's regular rate of pay for those regular work hours during which the employee is absent from work. An employee deemed to be on leave under this section shall not be deemed to be an employee of the state for purposes of workers compensation. Leave under the chapter shall be granted only for service related to a disaster within the state of Rhode Island. Leave under this chapter shall not be granted for the purpose of obtaining training. Rhode Island Gen. Laws § 28-49-3.

I. Commission Sales Representatives

As a general rule, a person employed on a commission basis to solicit sales orders earns or is entitled to commission when the order is accepted by his employer. *Oken v. National Chain Co.*, 424 A.2d 234, 235 (R.I.1981). However, the general rule is not absolute and may be altered by a written agreement by the parties which clearly demonstrates a different compensation scheme. *See Nuzzo v. Nuzzo Campion Stone Enterprises, Inc.*, 173 A.3d 711, 717 (2016) (where Court upheld the language of a Sales Commission Agreement where plaintiff was only owed a commission after the customer pays for the order, as opposed to when order is accepted).

J. Commercial Motor Vehicle Operators

No employer shall knowingly allow, permit, or authorize an employee to operate a commercial motor vehicle in the United States: (1) in which the employee has more than one license; (2) prior to obtaining, on a written application, the information specified in § 31-10.3-28(c); (3) when the employee's license is suspended, revoked, cancelled, or otherwise withdrawn; (4) during any period in which the driver, or the commercial motor vehicle he or she is driving, or the motor carrier operator, is subject to an out-of-service order; or (5) in violation of a federal, state, or local law or regulation pertaining to railroad-highway grade crossings. § 31-10.3-29.

No driver shall use a hand-held mobile telephone while driving a commercial motor vehicle. No motor carrier shall allow, or require its drivers to use, a hand-held mobile telephone while driving a commercial motor vehicle. Using a hand-held mobile telephone is permissible by drivers of a commercial motor vehicle when necessary to communicate with law enforcement officials or other emergency services. § 31-10.3-38.

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K. Labor Relations Act

The Rhode Island State Labor Relations Board (RISLRB) is promulgated pursuant to the authority granted in R.I. Gen. Laws Chapter 28-7. The public policy of the State of Rhode Island, as it relates to labor relations, is to encourage the practice and procedure of collective bargaining, and to protect employees in the exercise of full freedom of association, self-organization and designation of representatives of their own choosing for the purpose of collective bargaining, or mutual aid and protection, free from the interference, restraint or coercion of their employers. The RI State Labor Relations Board is an autonomous Board created within the Department of Labor and Training. However, neither the Director of the Department of Labor and Training, nor any board or other agency shall in any way review, modify or reverse any decision or finding of the Board, or supervise or control the Board, in its exercise of its powers, or performance of its duties, as defined by law. R.I. Gen. Laws § 28-7-4. The Board is comprised of seven members who are appointed by the Governor, with the advice and consent of the Senate. Three members of the Board are appointed to represent labor, three members are appointed to represent management, including at least one representative of local government, and one member of the Board is appointed as a representative of the public generally. The Board Member's appointments are for terms of six years; the Governor designates one member to serve as Chairperson of the Board. Two members of the Board constitute a quorum. State law does not expressly limit the Board's jurisdiction over employers; however, the Board's jurisdiction is preempted as to certain employers, by Federal law. As a practical matter, for many years, the Board's cases have been limited to Municipal, State, quasi-Municipal and quasi-State (various "authorities") employers.

L. Abortion

In 2023, Rhode Island finally repealed §36-12-2.1, a partially unconstitutional and unenforceable law which provided that the state may not include abortion coverage in any municipal employee health-insurance contract, plan, or policy, with exceptions only to save a woman's life or if the pregnancy is the result of rape or incest.

Rhode Island does not prohibit plans in its state exchange from covering abortion services. However, Rhode Island requires insurance companies participating in the state exchange to offer at least one plan in each "metal" (e.g., bronze, silver, etc.) that excludes abortion coverage, with exceptions to save a woman's life, or if the pregnancy is the result of rape or incest. (If non-religious small businesses select coverage that excludes abortion, their employees may choose a different plan that includes abortion coverage but then must pay the difference in cost.) 2015 R.I. Pub. Laws 5900.

M. Local Ordinances

None.

N. New Developments (including COVID permanent changes)

The Rhode Island Department of Health (RIDOH) requires employers to follow COVID-19 health and safety guidelines, such as screening for illness and requiring masks. The Families First Coronavirus

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Response Act (FFCRA) requires most employers to provide employees with two weeks (up to 80 hours) of paid sick leave if they are quarantined or experiencing Covid-19 symptoms. In Rhode Island, most employees can earn up to 40 hours of sick leave as required under State law. This can be used in addition to the FFCRA leave. If an employee does not have paid sick leave through his or her employer, or if they have used up all available sick time, Pandemic Unemployment Assistance (PUA) is another option. PUA is available to people with COVID-19 or caring for someone with COVID-19 — including self-employed and independent contractors. If an employee's place of business closes, or the employee is directed by the employer to stay home resulting in non-payment, the employee may be eligible for regular unemployment insurance (UI) and can apply for benefits through the Department of Labor and Training (DLT). DLT is waiving the usual seven day waiting period for COVID-19 related claims. Gig economy workers, contract workers, small business owners, workers for hire, and self-employed individuals who are out of work because of COVID-19, may also be eligible for Pandemic Unemployment Assistance (PUA). If an employee is unable to work but their place of work remains open, or if an individual turns down an offer of employment, the individual needs to have good cause to collect benefits. Good cause includes: the individual has tested positive for COVID-19; the individual's doctor recommends they not work because they are high-risk; or the individual is the primary caregiver for someone whose place of care is closed due to COVID-19.