

NEW MEXICO — State Laws by Topic

➤ AGE ◀

Under the New Mexico Human Rights Act, employers are prohibited from refusing to hire or promote, terminating, demoting, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on age, unless a *bona fide* occupational qualification exists. **Note:** State law does not define a protected age group.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on age, unless a *bona fide* qualification exists.

An employer is defined as any person employing four or more individuals, or any person acting for an employer.

➤ AIDS ◀

Discrimination: Employers are expressly prohibited from discriminating against an individual with AIDS or an AIDS-related virus.

Testing: Employers are prohibited from requiring employees to disclose results of an HIV test as a condition of hiring, promotion, or continued employment, unless absence of HIV is a *bona fide* occupational qualification for the job in question. In addition, informed consent must be obtained before an individual is tested for AIDS.

➤ ARRESTS/CONVICTIONS ◀

Convictions: A public employer may take an applicant's criminal conviction into account only after the applicant has been selected as a finalist for the position. Criminal records may not be considered when an arrest was not followed by a conviction or in cases of misdemeanor convictions not involving moral turpitude.

➤ BREAKS ◀

A 30-minute meal break must be provided to employees who work six hours.

➤ BREAST-FEEDING ◀

An employer, including the state and its political subdivisions, must provide an employee who uses a breast pump flexible break times and a space that is clean, private, near the employee's workspace, and not a bathroom.

An employer is not liable for storage or refrigeration of breast milk; for payment of break time in addition to established breaks; or for payment of overtime while a nursing mother is using a breast pump.

➤ CHILD LABOR ◀

Click on the following link <http://www.dws.state.nm.us/LaborRelations/LaborInformation/ChildLabor> to access the child labor section of New Mexico's Department of Workforce Solutions website, which contains a link to a brochure that outlines the state's child labor laws.

➤ CHILD SUPPORT ◀

Employers served with a child support order must begin withholding with the first pay period occurring after the order is served. Amounts are remitted within seven days of payday. Notify the custodial parent and the state promptly if the employee-obligor terminates.

➤ COURT ATTENDANCE ◀

See jury duty and violence.

➤ DISABILITIES ◀

Under the New Mexico Human Rights Act, employers are prohibited from refusing to hire or promote, terminating, demoting, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on a physical or mental handicap, unless a *bona fide* occupational qualification exists. **Note:** This prohibition also extends to individuals with certain medical conditions (such as cancer).

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on a physical or mental handicap, unless a *bona fide* occupational qualification exists.

A person with a physical or mental handicap is defined as one who has a physical or mental impairment that substantially limits one or more major life activity, has a record of such an impairment, or is regarded as having such an impairment. An employer is defined as any person employing four or more individuals, or any person acting for an employer.

➤ **DRUG TESTING** ◀

No statutory provisions for private employers.

Employees who work as direct health care providers in state facilities must be tested for drugs and alcohol.

➤ **FAMILIAL/MARITAL STATUS** ◀

Under the New Mexico Human Rights Act, employers are prohibited from refusing to hire or promote, terminating, demoting, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on spousal affiliation.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on spousal affiliation.

For purposes of spousal affiliation discrimination, an employer is defined as any person employing 50 or more employees.

➤ **FAMILY/MEDICAL LEAVE** ◀

Coverage: State employers.

General rule: State employees are entitled to a total of 12 weeks of unpaid family and medical leave in a 12-month period for the birth or adoption of a child, or for the employee's own or a family member's serious health condition.

Paid leave: Employees may elect, or an agency may require the employee, to substitute accrued leave for any part of unpaid family and medical leave.

See also military leave and pregnancy.

➤ **GENETIC TESTING** ◀

It is unlawful for employers to use genetic information in recruiting, hiring, and employment decisions.

➤ HEALTH CARE CONTINUATION COVERAGE ◀

Continuation coverage requirements generally apply to employers that provide group health insurance coverage to employees. Eligible employees have the right to continue coverage for up to six months.

Click on the following link <http://www.nmcpr.state.nm.us/nmac/parts/title13/13.010.0011.pdf> and scroll to 13.10.11.31 to access the continuation coverage provisions.

➤ JURY DUTY ◀

Employers cannot discharge, threaten, or coerce an employee who is summoned for jury duty, serves as a juror, or attends court for prospective jury service. Employers cannot require or request an employee to use vacation or sick leave for absences related to jury service.

An employee's jury service may be automatically postponed if: he/she is employed by an employer with five or fewer employees; another employee of that employer is summoned for jury service during the same period; or he/she is the only employee performing particular services so essential to the operations of the business that the enterprise must close or cease to function if he/she is required to perform jury duty.

➤ LIFESTYLE DISCRIMINATION ◀

Employers with one or more employees are prohibited from refusing to hire, discharging, or otherwise taking adverse action against an individual in the terms and conditions of employment because that individual is a smoker or a non-smoker, as long as the individual complies with company policies regulating smoking on its premises during working hours. Also, employers cannot require as a condition of employment that an employee or prospective employee abstain from smoking or using tobacco products during non-working hours, unless a *bona fide* job requirement exists.

➤ MASS LAYOFF NOTIFICATION ◀

No state-specific notification provision.

➤ MEDICAL DONATION LEAVE ◀

Under the Bone Marrow and Organ Donor Act, state employees may take a leave of absence, not to exceed 20 workdays, to donate an organ or bone marrow. Employees are permitted to request and use donated annual leave or sick leave. If an employee requests such donated leave, but does not receive the full amount needed for the donation, he/she may be granted a paid leave of absence for the remainder of the leave up to the maximum total of 20 workdays. Employers

may require verification by a physician regarding the purpose and length of the leave request. A paid leave of absence may not result in a loss of compensation, seniority, annual leave, sick leave, or accrued overtime for which the employee is otherwise eligible.

➤ **MILITARY LEAVE** ◀

Non-temporary employees who enter the military, National Guard, or organized reserves and serve with honor are entitled to military leave privileges.

Reinstatement: Employees are entitled to reemployment if: 1) they are honorably discharged or released from service; 2) they are still qualified to perform the job duties; and 3) application is made within 90 days after training, service, or hospitalization. Employers must restore the person to the same position or similar position with like seniority, status, and pay, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

Employees may not be discharged without cause for up to one year after reinstatement.

Family military leave: All state agencies in the classified service must abide by the federal Family and Medical Leave Act.

➤ **MINIMUM WAGE** ◀

Minimum hourly wage/overtime rate: \$7.50/\$11.25.

Basis for overtime: Over 40 hours/week.

Opportunity wage for under 20-year-olds: None.

➤ **NATIONAL ORIGIN** ◀

Under the New Mexico Human Rights Act, employers are prohibited from refusing to hire or promote, terminating, demoting, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on national origin or ancestry, unless a *bona fide* occupational qualification exists.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on national origin or ancestry, unless a *bona fide* qualification exists.

An employer is defined as any person employing four or more individuals, or any person acting for an employer.

➤ **NEW-HIRE REPORTING** ◀

Data to be reported: Employee's name, address, SSN; employer's name, address, federal EIN.

Reporting deadline/form: Within 20 days of hire or rehire; on W-4s or through the state's website.

➤ **OVERTIME** ◀

Basis for overtime: Over 40 hours in a workweek.

➤ **PAY STATEMENTS** ◀

Information required: Employer's name; gross pay/benefits earned; hours worked; pay period; itemized deductions.

➤ **PERSONNEL FILES** ◀

No provision.

➤ **POLYGRAPH TESTING** ◀

No provisions specified in the general employment context.

➤ **POSTING REQUIREMENTS** ◀

Workers' Compensation — All employers

Minimum Wage Act — All employers

Safety & Health Protection on the Job (English & Spanish) — All employers

Unemployment Compensation — All employers

Discrimination — All employers

No Smoking — All employers

National Human Trafficking Resource Center Hotline (English & Spanish) — Employers covered by the state minimum wage

➤ PREGNANCY ◀

Coverage: Employers with at least four employees.

General rule: Employers may not treat women affected by pregnancy, childbirth, or disabilities related to pregnancy or childbirth differently than they treat other persons who are not pregnant, but have temporary disabilities.

See also family/medical leave.

➤ RACE ◀

Under the New Mexico Human Rights Act, employers are prohibited from refusing to hire or promote, terminating, demoting, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on race or color.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on race or color.

An employer is defined as any person employing four or more individuals, or any person acting for an employer.

➤ REFERENCES ◀

Blacklisting: An employer cannot attempt to prevent a former employee from obtaining other employment, although, upon request, an employer may give an accurate report or honest opinion of the qualifications and performance of an ex-employee.

References: When requested to provide a reference for a former/current employee, an employer that acts in good faith is immune from liability for comments about the employee's job performance. The immunity does not apply when the reference information supplied is knowingly false, deliberately misleading, provided with malicious purpose, or violates any civil rights of the former employee.

When an employee signs a release from liability and guarantee of confidentiality for a prospective employer to conduct reference checks, former employers have an absolute or unqualified privilege to supply relevant information and absolute immunity from liability for defamation if the information is negative.

Social media: Employers can't request or require job applicants to provide passwords or demand access to their social networking accounts or profiles. Employers may access public information. These restrictions don't limit employers from creating policies regarding workplace

Internet use, social networking site use, and e-mail use. Employers may monitor employees' use of their equipment and e-mail without requesting or requiring job applicants to provide passwords in order to gain access to their social networking accounts or profiles.

➤ RELIGION ◀

Under the New Mexico Human Rights Act, employers are prohibited from refusing to hire or promote, terminating, demoting, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on religion, unless a *bona fide* occupational qualification exists.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on religion, unless a *bona fide* qualification exists.

An employer is defined as any person employing four or more individuals, or any person acting for an employer.

➤ REPORTING PAY ◀

No provision.

➤ SAFETY ◀

Click on the following link http://www.nmenv.state.nm.us/Ohsb_Website/index.htm to access New Mexico's Occupational Health and Safety Bureau home page. For specific information about state regulations, click on <http://www.workerscomp.state.nm.us/>.

➤ SCHOOL VISITATION LEAVE ◀

No provision.

➤ SEX DISCRIMINATION ◀

Under the New Mexico Human Rights Act, employers are prohibited from refusing to hire or promote, terminating, demoting, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on sex, unless a *bona fide* occupational qualification exists.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on sex, unless a *bona fide* occupational qualification exists.

An employer is defined as any person employing four or more individuals, or any person acting for an employer.

Under the Fair Pay for Women Act, employers that have four or more employees may not discriminate between employees on the basis of gender by paying wages to employees at a rate less than the rate that employers pay to employees of the opposite gender for equal work on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions. *Exceptions:* payments made under seniority systems, merit systems, or systems that measure earnings by quantity or quality of production. Employers can't reduce employees' wages to comply with the law.

Employers may not retaliate against employees who complain. Employees may sue their employers for compensatory and punitive damages or injunctive relief. Employers may also be required to post a notice describing their violations or a copy of a cease and desist order.

➤ SEXUAL HARASSMENT ◀

No general provision.

➤ SEXUAL ORIENTATION DISCRIMINATION ◀

Under the New Mexico Human Rights Act, employers are prohibited from refusing to hire or promote, terminating, demoting, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on sexual orientation or gender identity, unless a *bona fide* occupational qualification exists.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on sexual orientation or gender identity, unless a *bona fide* occupational qualification exists.

For purposes of this Act, an employer is defined as having 15 or more employees. Gender identity is defined to mean a person's self-perception, or perception of that person by another, of that person's identity as a male or female based upon the person's appearance, behavior, or physical characteristics that are in accord with, or opposed to, the person's physical anatomy, chromosomal sex, or sex at birth. Sexual orientation means male or female heterosexuality, homosexuality, or bisexuality, whether actual or perceived.

➤ **SMOKING** ◀

The Dee Johnson Clean Indoor Air Act prohibits smoking in any indoor workplace or indoor public place, with limited exceptions. Smoking is also prohibited near entrances, windows, and ventilation systems of all workplaces and public places where smoking is prohibited.

Policy: Employers must adopt, implement, post, and maintain a written smoking policy pursuant to the Act.

In areas where smoking is prohibited, employers must conspicuously post a “no smoking” sign. In areas where smoking is allowed, employers must conspicuously post a “smoking permitted” sign.

See also lifestyle discrimination.

➤ **SOCIAL SECURITY NUMBER PRIVACY** ◀

No workplace-applicable provision.

➤ **UNEMPLOYMENT INSURANCE** ◀

Click on the following link <http://www.dws.state.nm.us/dws-uitax.html> to access the New Mexico Department of Workforce Solutions Unemployment Insurance Tax Bureau home page.

➤ **VACATION PAY UPON TERMINATION** ◀

Final wages include vacation pay if there is an agreement or company policy to pay.

➤ **VIOLENCE** ◀

Domestic violence: The Promoting Financial Independence for Victims of Domestic Abuse Act requires employers to grant an employee who is a victim of domestic abuse time off from work to seek an order of protection or attend court proceedings. Domestic abuse leave is defined as intermittent paid or unpaid leave taken for up to eight hours per day, for as many days as necessary. Employees are permitted to use accrued sick leave or other available paid time off, compensatory time, or unpaid time consistent with the employer’s policies.

When domestic abuse leave is unforeseeable, the employee or the employee’s designee must give notice of the need for leave within 24 hours of commencing leave. Employers may require verification of the need for domestic abuse leave. Retaliation against an employee for using domestic abuse leave is prohibited, and confidentiality is required of the employer.

In addition, an executive order requires all state agencies to implement workplace policies regarding domestic violence, sexual assault, and stalking to provide victims with safe and supportive work environments.

➤ **VOTING** ◀

Employees may take up to two hours time off from work to vote when polls are open. Time off to vote need not be given if the workday begins more than two hours after the polls open or ends more than three hours before the polls close. Employees may not be penalized for taking time off to vote. Employers may specify hours during the workday that employees may take off for voting, as long as it's not the normal lunch period.

Wages: Attorneys General have construed the law to require two paid hours, unless the workday starts more than two hours after the polls open or ends more than three hours before the polls close.

Note: Certain employees may take up to two hours off work to vote in elections of Indian nations, tribes, or pueblos. To take time off to vote, an employee must be enrolled as a member of the Indian nation, tribe, or pueblo and must be qualified to vote.

➤ **WAGE DEDUCTIONS** ◀

Employers shall pay such wages in full, less lawful deductions and less payroll deductions authorized by the employer and the employee.

➤ **WAGE GARNISHMENT** ◀

The lesser of 25% of disposable weekly pay, or the amount by which disposable weekly pay exceeds 40 times the federal minimum wage in effect during the week the garnishment is to occur, may be withheld. The state has no provisions prohibiting discharge, but federal law prohibits discharging an employee for any single indebtedness.

➤ **WAGE PAYMENT ON TERMINATION** ◀

Employee who quits: Next payday.

Employee who's fired: Within five days.

➤ **WAGE PAYMENTS** ◀

Payday requirements: Semimonthly or more often.

Direct deposit: Employers may not require employees to be paid electronically.

➤ **WHISTLEBLOWING** ◀

Employers are prohibited from discharging or in any manner discriminating against an employee because the employee has: 1) filed a complaint or instituted a proceeding under New Mexico's Occupational Health and Safety Act; 2) testified or is about to testify in any such proceeding; or 3) exercised his/her rights under the state's Occupational Health and Safety Act.

In addition, the state's Mining Safety Act prohibits individuals from discriminating against employees who file complaints under the Act.

Under the New Mexico Whistleblower Protection Act, a public employer is prohibited from taking retaliatory action against a public employee who:

- communicates to the public employer or a third party information about an action or a failure to act that the public employee believes in good faith constitutes an unlawful or improper act;
- provides information to, or testifies before, a public body as part of an investigation, hearing, or inquiry into an unlawful or improper act; or
- objects to or refuses to participate in an activity, policy, or practice that constitutes an unlawful or improper act.

Civil action must be filed within two years from the date on which the retaliatory action occurred and applies only to retaliatory action that occurred on or after July 1, 2008.

➤ **WORK AUTHORIZATION** ◀

No general provision.

➤ **WORKERS' COMPENSATION** ◀

Click on the following link <http://www.workerscomp.state.nm.us/> to access the State of New Mexico Workers' Compensation Administration home page. To access Workers' Compensation coverage information for employers, click on <http://www.workerscomp.state.nm.us/employers.php>.