

# **Labor and Employment Law for South Carolina Lawyers**

## **Fifth Edition**

**Volumes I & II  
2023-2024 Supplement**

### **Table of Contents**

#### **VOLUME I**

##### **South Carolina Labor and Employment Law**

<b>Chapter 1 - Employment Contracts.....</b>	<b>1</b>
IV.      REQUISITES FOR CREATING THE RELATIONSHIP.....	1
B.      Implied-In-Fact Contracts.....	1
2.      The Conspicuous Disclaimer Safe Harbor Statute.....	1
IX.      CONTRACT TERMS.....	1
D.      Implied Terms.....	1
1.      Covenant of Good Faith and Fair Dealing.....	1
<b>Chapter 2 - Covenants Not to Compete and Other Restrictive Covenants.....</b>	<b>3</b>
IV.      RESTRICTIVE COVENANTS IN CONNECTION WITH THE SALE OF A BUSINESS.....	3
V.      COVENANTS NOT TO DISCLOSE CONFIDENTIAL INFORMATION AND TRADE SECRETS.....	5
A.      Covenant Not to Disclose Trade Secrets.....	5
B.      Covenant Not to Disclose Confidential Information.....	5
VI.      THE BLUE-PENCIL RULE.....	6
<b>Chapter 3 - Employee Reputation, Privacy and Dignity.....</b>	<b>7</b>
II.      INVASION OF PRIVACY IN SOUTH CAROLINA.....	7
A.      Publication of Private Affairs.....	7
B.      Wrongful Intrusion into Private Affairs.....	7
III.      PRIVACY AND SOUTH CAROLINA WORKERS' COMPENSATION LAW.....	7

---

**Table of Contents**

---

IV.	PRIVACY AND SOUTH CAROLINA FREEDOM OF INFORMATION ACT (FOIA).....	8
VI.	POLYGRAPH.....	8
B.	Exceptions to 29 U.S.C. § 2002.....	8
C.	Case Law.....	8
1.	<i>In re Rapid Robert's Inc.</i> .....	8
2.	<i>In re Scrivener Oil Company</i> .....	8
3.	<i>Wiley v. Mayor &amp; City of Baltimore</i> .....	9
4.	<i>Worden v. SunTrust Banks, Inc.</i> .....	9
VII.	SEARCHES.....	9
A.	Drug Testing.....	9
1.	Federal Legislation and Regulations.....	9
c.	Department of Transportation Regulations.....	9
d.	Federal Preemption.....	9
2.	South Carolina Drug-Free Workplace Act.....	9
VIII.	SURVEILLANCE AND MONITORING.....	10
E.	Electronic Interception.....	10
1.	Wiretapping.....	10
2.	Computerized Work Monitoring.....	10
IX.	REFERENCE CHECKING.....	10
A.	Credit Reports.....	10
<b>Chapter 4 - Employment-Related Torts.....</b>		<b>11</b>
V.	COMMON WORKPLACE TORTS.....	11
A.	Wrongful Discharge in Violation of Public Policy.....	11
C.	Defamation.....	11
2.	Defamatory Meaning.....	11
3.	Publication.....	11
7.	Damages and Penalties.....	12
8.	Defenses.....	12
e.	First Amendment.....	12
(1)	Public Official.....	12
H.	Negligent Hiring, Retention and Supervision.....	13
1.	Employer's Knowledge.....	13

---

## Table of Contents

---

I.	Other Employment-Related Torts.....	13
1.	Interference with Economic Relations.....	13
a.	Interference with Contractual Relations.....	13
2.	Civil Conspiracy.....	14
<b>Chapter 5 - Workers' Compensation.....</b>		15
III.	COVERAGE AND JURISDICTION.....	15
III.A.	NOTICE TO EMPLOYER REQUIREMENT.....	15
III.B.	STATUTE OF LIMITATIONS FOR WORKERS' COMPENSATION CLAIMS.....	15
IV.	COMPENSABILITY OF CLAIMS.....	16
A.	Employment Relationship.....	16
1.	Independent Contractor and Sole Proprietor.....	16
3.	Statutory Employer/Employee.....	16
B.	Injury by Accident.....	16
1.	Repetitive Trauma.....	17
7.	Occupational Disease Cases.....	17
8.	Vaccinations and Inoculations.....	17
9.	Aggravation of a Pre-Existing Injury.....	18
10.	Change in Condition.....	18
C.	Arising Out of and in the Course of Employment.....	18
2.	Idiopathic Falls.....	18
3.	Going to and Coming from Work.....	19
4.	Positional Risk Doctrine.....	19
5.	Mutual Benefit Doctrine.....	19
6.	Presumption Death Arose Out of and in the Course and Scope of Employment.....	20
V.	EXCLUSIVE REMEDY AND THIRD-PARTY PROCEEDINGS.....	20
VI.	BENEFITS.....	20
A.	Benefits for Temporary Disability.....	20
B.	Benefits for Permanent Disability.....	21
C.	Medical Benefits.....	21
<b>Chapter 6 - Retaliatory Discharge.....</b>		23
III.	JURY DUTY/COMPLIANCE WITH SUBPOENA.....	23
D.	Common Law Protections.....	23

## **Table of Contents**

---

V.	ACTUAL AND POTENTIAL LIMITS ON RETALIATORY DISCHARGE IN VIOLATION OF PUBLIC POLICY.....	23
D.	Wage Payment Act.....	23
<b>Chapter 7 - Unemployment Law and Procedure.....</b>		25
II.	SUBSTANTIVE ASPECTS OF THE FEDERAL AND SOUTH CAROLINA UNEMPLOYMENT INSURANCE SYSTEM.....	25
B.	Operation of the South Carolina Unemployment Compensation Program.....	25
4.	Claimant Eligibility for Benefits.....	25
c.	The Claimant Must Be Able to Work, Be Available for Work, and Be Actively Seeking Work.....	25
(3)	Actively Seeking Work.....	25
III.	PROCEDURAL ASPECTS OF THE SOUTH CAROLINA UNEMPLOYMENT INSURANCE PROGRAM.....	25
F.	Evidentiary Appeal to the Appeal Tribunal.....	25
6.	Representation.....	25
H.	Appeal to the Administrative Law Court.....	26
2.	Standard of Review.....	26
IV.	STRATEGIC ISSUES.....	27
E.	Overpayment and Fraud.....	27

## **Federal and State Laws Relating to Pay and Benefits**

<b>Chapter 8 - Fair Labor Standards Act.....</b>		29
II.	COVERAGE.....	29
A.	Employees and Employers.....	29
III.	MINIMUM WAGE.....	32
B.	Tip Credit Exception.....	32
C.	Tip Pooling.....	32
IV.	OVERTIME.....	33
A.	“Work Week” and “Hours Worked”.....	33
B.	“Regular Rate” of Pay.....	33
1.	Belo Agreements.....	34
2.	Fluctuating Work Week Method.....	34

## **Table of Contents**

---

C.	Exclusions from the “Regular Rate”.....	34
D.	Compensatory Time.....	36
V.	EXEMPTIONS.....	36
A.	Exemptions from the Minimum Wage Requirement.....	36
2.	Youth Minimum Wage.....	36
B.	Exemptions from the Overtime Pay Requirement.....	36
1.	The Professional, Executive and Administrative (“White Collar”) Exemptions.....	36
2.	Highly Compensated Exemption.....	37
4.	The Salary Basis Test.....	37
a.	Deductions for Partial Day Absences.....	37
b.	Deductions for Disciplinary Reasons.....	37
c.	Deductions for Jury Duty, Attendance as a Witness, or Temporary Military Leave.....	37
5.	The Duties Test.....	37
6.	Other Common Exemptions.....	38
d.	Computer Employees.....	38
VI.	HOURS WORKED.....	38
D.	On-Call and Waiting Time.....	38
F.	Breaks for Nursing Mothers.....	38
VII.	CHILD LABOR.....	40
A.	Limitations on Permissible Work Hours for Minors Aged 14 and 15 Years Old.....	40
B.	Impermissible Jobs for Minors Between 14 and 16 Years of Age.....	40
C.	Permissible Jobs for Minors Between 14 and 16 Years of Age.....	44
E.	Certificates of Age for Employees Aged 14 to 16 Years.....	48
F.	Extremely Hazardous Occupations.....	48
VIII.	REVAMPING RECORD-KEEPING PROCEDURES UNDER THE FLSA.....	48
A.	General.....	48
C.	Required Records.....	49
X.	ENFORCEMENT AND REMEDIES.....	49
A.	Enforcement.....	49

## **Table of Contents**

---

1.	Lawsuits By Current or Former Employees.....	49
a.	Individual Claims.....	49
b.	Collective Actions.....	50
c.	Rule 68 and Mootness.....	53
d.	Hybrid Actions.....	54
3.	Criminal Actions By the Department of Justice.....	55
B.	Remedies .....	55
D.	Effect of Arbitration Agreements.....	56
E.	Settlement of FLSA Claims.....	57
XI.	DEFENSES.....	57
B.	Good Faith Defense to Liquidated Damages.....	57
XII.	FLSA ISSUES IN THE MODERN WORKPLACE.....	58
<b>Chapter 9 - Wage Payment Act and Related Laws.....</b>		59
I.	PAYMENT OF WAGES ACT.....	59
K.	Employee Causes of Action.....	59
b.	Statutory Wages/Preemption.....	59
<b>Chapter 10 - Employee Retirement Income Security Act.....</b>		61
VI.	PRIVATE CAUSES OF ACTION UNDER ERISA.....	61
B.	Interference with Protected ERISA Rights (ERISA § 510, 29 U.S.C. § 1140).....	61
2.	The Remedy.....	61
<b>Federal Labor and Employment Laws</b>		
<b>Chapter 11 - Family and Medical Leave Act.....</b>		63
II.	DEFINITIONS OF KEY TERMS.....	63
A.	Employer.....	63
B.	Eligible Employee.....	64
D.	Health Care Provider.....	64
G.	Son or Daughter.....	64
III.	FMLA LEAVE REQUIREMENTS.....	64
A.	Determining the 12-Month Period.....	65
D.	Compensation During FMLA Leave.....	65
3.	Relationship to Workers' Compensation Absence.....	65

---

## Table of Contents

---

E.	Employer General Notice Requirements.....	65
F.	Employee Notice Requirements.....	66
G.	Employer Notice Requirements After Leave Request.....	66
IV.	CERTIFICATION REQUIREMENTS.....	66
V.	EMPLOYMENT AND BENEFIT PROTECTION.....	67
A.	Restoration to Same or Equivalent Position.....	67
B.	Pay and Benefit Protection.....	68
C.	Exception to Job Restoration – Key Employees.....	68
<b>Chapter 12 - Foreign Nationals in the Workforce.....</b>		<b>69</b>
I.	IMMIGRATION REFORM AND CONTROL ACT OF 1986 – EMPLOYMENT VERIFICATION AND UNFAIR EMPLOYMENT PRACTICES.....	69
D.	Unfair Immigration-Related Employment Practices.....	69
1.	National Origin and Citizenship Discrimination.....	69
a.	Relationship to Title VII of the Civil Rights Act of 1964.....	69
4.	Enforcement Procedures and Remedies.....	69
E.	Mandatory Employment Verification System.....	70
1.	Completion of the Form I-9, Employment Eligibility Verification Form.....	70
2.	Examination of Documents – Prohibition Against Document Abuse.....	70
4.	Government Enforcement and Penalties.....	70
b.	Citations and Penalties.....	70
V.	EMPLOYMENT-BASED IMMIGRATION OPTIONS.....	71
A.	Nonimmigrant or Temporary Employment Visas.....	71
2.	Nonimmigrant Employment-Based Visa Categories.....	71
a.	The Business Visitor Visa –B Visa and the Visa Waiver Program.....	71
(1)	The Visa Waiver Program.....	71
(2)	Legitimate B-1 Activity.....	71
(3)	NAFTA’s Expansion of Legitimate B-1 Visa Activities for Canadian and Mexican Nationals.....	72
b.	The H-1B Visa for Specialty Occupations.....	73
(2)	The Labor Condition Application (LCA).....	73

## **Table of Contents**

---

(4)	The H-1B Cap.....	73
(6)	Employer's Obligation to Pay the Return Costs of Transportation if Employer Terminates Employee Prior to Expiration of Visa.....	73
c.	E Visa for Treaty Traders and Treaty Investors.....	74
(3)	Dependents; Spouses May Obtain Authorization to Work.....	74
d.	L-1 Visa for Intracompany Transferees.....	74
(5)	Dependents; Spouses may Obtain Authorization to Work.....	74
e.	The TN Visa: Canadian and Mexican NAFTA Professionals.....	75
f.	The H-2A Visa for Temporary or Seasonal Agricultural Workers and the H-2B Visa for Temporary or Seasonal Nonagricultural Workers.....	75
(3)	The H-2B Cap.....	75
VI.	SENDING WORKERS ABROAD – OUTBOUND IMMIGRATION.....	76
 <b>Chapter 13 - Labor-Management Relations.....</b> 77		
I.	INTRODUCTION.....	77
V.	REPRESENTATION OF EMPLOYEES.....	77
A.	Petitions for Elections.....	77
1.	Showing of Interest.....	78
B.	Establishing Appropriate Bargaining Units.....	78
1.	General.....	78
C.	Procedure.....	79
1.	Petition.....	79
2.	Appeals.....	79
 <b>Chapter 14 - Affirmative Action Obligations of Federal Government Contractors...81</b>		
I.	AFFIRMATIVE ACTION.....	81
A.	Executive Order 11246.....	81
B.	The Rehabilitation Act of 1973.....	82
C.	The Vietnam Era Veterans' Readjustment Assistance Act of 1974.....	83

---

## Table of Contents

---

II.	RECORDKEEPING AND NOTICES.....	83
A.	Recordkeeping.....	83
2.	The Rehabilitation Act of 1973 and VEVRAA.....	83
B.	Notices and Postings.....	84
III.	OFCCP Contractor Portal Annual AAP Certification.....	85
IV.	OFCCP's 2022 Directives on Compensation.....	85
 <b>Chapter 15 - Occupational Safety and Health.....</b>		87
I.	THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 AND THE SOUTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH ACTS OF 1972 AND 1973.....	87
B.	The General Duty Clause.....	87
C.	Standards and Regulations.....	88
2.	Recordkeeping.....	88
II.	SOUTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH – ENFORCEMENT ACTIONS.....	88
A.	Warrants.....	88
B.	Citation and Notice of Penalty.....	89
1.	Categories of Citations.....	89
e.	Bipartisan Budget Act of 2015.....	89
2.	Defenses.....	90
3.	Criminal Penalties.....	90
D.	Discrimination.....	91
III.	USEFUL RESOURCES.....	91
 <b>Chapter 16 - Uniformed Servicemembers' Rights and Benefits .....</b>		93
II.	UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 (USERRA) .....	93
B.	Employment Rights and Prohibitions.....	93
1.	Benefits Entitlement.....	93
a.	Is <u>Paid</u> Military Leave Required.....	93
K.	Notice of Rights and Duties.....	94
 <b>Chapter 17 - Worker Adjustment and Retraining Notification Act.....</b>		95
II.	COVERAGE: WHO MUST GIVE WARN ACT NOTICE?.....	95
A.	Employer.....	95
V.	WHAT IS “NOTICE”?.....	95

## **Table of Contents**

---

VII.	WHAT EVENTS TRIGGER WARN ACT NOTICE REQUIREMENTS?.....	96
A.	Plant Closings.....	96
3.	Suffering an Employment Loss.....	96
IX.	CAN THE 60-DAY NOTICE REQUIREMENT BE WAIVED?.....	96
B.	Notice Requirement Partially Waived.....	96
1.	Faltering Company.....	96
2.	Unforeseen Business Circumstances.....	96
3.	Natural Disaster.....	96
X.	WHEN MUST NOTICE BE EXTENDED?.....	97
XI.	WHAT ARE THE PENALTIES FOR VIOLATING THE WARN ACT?.....	97
A.	Liability to Employees.....	97
F.	Attorneys' Fees.....	97
G.	Exclusive Remedy and Statute of Limitations.....	98
H.	No Right to Jury Trial.....	98

## **VOLUME II**

### **Federal Anti-Discrimination Laws**

<b>Chapter 18 - Age Discrimination in Employment Act.....</b>	<b>99</b>	
II.	COVERAGE.....	99
A.	Exempt Employees.....	99
IV.	HOW TO PROVE AGE DISCRIMINATION.....	99
A.	Direct or Indirect Evidence of Discrimination.....	100
B.	<i>McDonnell Douglas</i> Framework.....	100
1.	<i>Prima Facie</i> Case of Discriminatory Intent.....	100
3.	Employee's Proof of Pretext.....	100
D.	Mixed Motive Cases.....	101
F.	Retaliation.....	101
<b>Chapter 19 - Americans with Disabilities Act.....</b>	<b>103</b>	
III.	DEFINITIONS UNDER THE ADA.....	103
A.	Disability.....	103
B.	Record of Substantially Limiting Condition.....	103
F.	Qualified Individual with a Disability.....	103

---

## Table of Contents

---

G.	Essential Functions of the Position.....	103
IV.	REASONABLE ACCOMMODATION AND UNDUE HARDSHIP UNDER THE ADA.....	104
A.	Reasonable Accommodation.....	104
B.	Undue Hardship.....	105
V.	AFFIRMATIVE DEFENSES TO VIOLATIONS OF THE ADA.....	106
VI.	MEDICAL EXAMINATIONS AND QUESTIONS UNDER THE ADA.....	106
VII.	HEALTH AND WELLNESS PLANS UNDER THE ADA.....	106
VIII.	DRUG AND ALCOHOL ABUSE UNDER THE ADA.....	107
X.	RELATIONSHIP BETWEEN ADA AND OTHER EMPLOYMENT STATUTES.....	107
A.	Family and Medical Leave Act.....	107
<b>Chapter 20 - Equal Pay.....</b>		109
I.	OVERVIEW.....	109
II.	EQUAL PAY ACT.....	109
C.	Burden of Proof Under the EPA.....	109
E.	Rudiments of Practice Under the EPA.....	111
2.	Time Requirements.....	111
3.	Right to a Jury Trial.....	111
III.	TITLE VII.....	111
E.	Rudiments of Practice Under Title VII.....	111
1.	Pre-Litigation Administrative Requirements.....	111
<b>Chapter 21 - Whistleblower Protection and Litigation Under the Sarbanes-Oxley Act.....</b>		113
II.	JURISDICTION UNDER SOX.....	113
B.	Subject Matter Jurisdiction – Protected Activities.....	113
III.	CLAIM PROCESS.....	113
A.	Statute of Limitations.....	113
B.	Pleading Requirements.....	113
2.	Establishing a Prima Facie Case.....	113
<b>Chapter 22 - Title VII of the Civil Rights Act.....</b>		115
I.	COVERAGE.....	115
A.	Employers.....	115
1.	Definition.....	115

## **Table of Contents**

---

2.	Identification.....	115
a.	Single Employer Theory.....	115
b.	Joint Employer Theory.....	115
c.	Directors, Shareholders, and Partners.....	116
3.	Counting Employees.....	116
a.	“For Each Working Day”.....	116
b.	“In Each of Twenty or More Calendar Weeks.....	117
4.	Scope of Liability.....	117
b.	Supervisors and Other Agents.....	117
5.	Exclusions.....	117
b.	Religious Bodies.....	117
d.	Foreign Companies Covered By a Treaty.....	117
B.	Employees .....	118
1.	Independent Contractor Distinction.....	118
2.	Former Employees.....	118
3.	Partners, Shareholders and Corporate Directors.....	118
a.	Partners.....	118
b.	Shareholders-Directors.....	119
4.	Volunteers.....	119
5.	Students and Prisoners.....	120
b.	Prisoners.....	120
6.	Exclusions.....	120
a.	Elected Officials and Staff.....	120
b.	Uniformed Officials.....	121
e.	Non-Indian Living On or Near a Reservation....	122
C.	Labor Unions and Apprenticeship Programs.....	122
D.	Employment Agencies.....	122
1.	Definition.....	122
2.	Special Problems.....	123
a.	Placement Offices.....	123
b.	Newspapers.....	123
c.	State Licensing and Certification Boards.....	123

---

## Table of Contents

II.	PROOF OF A VIOLATION.....	124
B.	Disparate Treatment.....	124
1.	Direct Evidence of Discrimination.....	124
2.	Indirect Evidence of Discrimination: <i>McDonnell Douglas Test</i> .....	125
a.	<i>Prima Facie Case</i> .....	125
(1)	<i>Prima Facie Elements of Specific                 Adverse Actions</i> .....	125
(b)	Discharge.....	125
(i)	Religious Accommodation....	126
(2)	Analysis of Select Elements of <i>Prima Facie Tests</i> .....	126
c.	Pretext.....	126
D.	Other Defenses to Title VII Claims.....	126
III.	SPECIAL PROBLEMS RELATING TO RACE DISCRIMINATION.....	127
B.	What Constitutes Discrimination “Because of” Race – Scope of Protection.....	127
1.	Discriminatory Failure to Hire or Promote.....	127
2.	Racial Harassment.....	127
4.	Association.....	128
5.	Disparate Impact Discrimination.....	129
C.	The BFOQ and Business Necessity Defenses.....	129
IV.	SPECIAL PROBLEMS RELATING TO SEX DISCRIMINATION.....	129
A.	Sex-Plus Discrimination.....	129
B.	The BFOQ Defense.....	130
C.	Sexual Harassment.....	130
1.	Quid Pro Quo Sexual Harassment.....	130
2.	Hostile Work Environment.....	130
D.	Frequency.....	130
E.	Severity.....	130
F.	Employer Liability.....	130
G.	Supervisor Liability.....	131
H.	Title VII Claims Based upon Sexual Orientation.....	131

## Table of Contents

---

V.	SPECIAL PROBLEMS RELATING TO NATIONAL ORIGIN DISCRIMINATION	131
	No updates.	
VI.	RELIGIOUS DISCRIMINATION .....	132
	B. Disparate Treatment .....	132
	2. Bona Fide Occupational Qualification (BFOQ) Defense.....	132
	C. Religious Harassment .....	132
	D. An Employer's Failure to Accommodate .....	132
	1. Cases Issued by the United States Supreme Court.....	132
	3. Undue Hardship.....	134
	d. Other Accommodation Cases.....	135
	(1) <i>Miller v. Drennon</i> .....	135
VII.	SPECIFIC EMPLOYMENT PRACTICES .....	135
	A. Recruitment and Advertising .....	135
	1. Methods of Recruitment.....	135
	a. Word-of-Mouth.....	135
	c. Nepotism.....	136
	e. "Help Wanted" Advertisements.....	136
	B. Application and Interview Procedures.....	138
	C. Selection Criteria.....	138
	1. Disparate Treatment.....	138
	2. Disparate Impact.....	139
	a. Proof of Disparate Impact.....	139
	3. Official Guidance.....	140
	D. Promotions.....	140
	F. Layoffs/Reductions in Force.....	140
	G. Constructive Discharge.....	140
	H. Terminations.....	141
VIII.	RETALIATION.....	142
	A. What is "Protected Activity"?.....	142
	B. What is "Discrimination"?.....	142
	C. What is a "Causal Link"?.....	143
IX.	UNION AND APPRENTICESHIP PROGRAM DISCRIMINATION.....	143
	C. Membership Rights and Privileges.....	143

## **Table of Contents**

---

X.	EMPLOYMENT AGENCY.....	144
	No updates.	
XI.	ADMINISTRATIVE ENFORCEMENT PROCEDURES.....	144
	E. Formal Charge Requirements.....	144
	1. Where to File.....	144
	3. Writing and Verification.....	145
	5. Investigation.....	145
	8. Access to Investigation Records.....	146
	F. Timeliness Issues .....	146
	1. When an Unlawful Employment Practice Occurs.....	146
	3. Pay Discrimination.....	147
	4. Tolling, Waiver, and Estoppel.....	147
	5. Lawsuits.....	147
	a. Who May Sue.....	147
	(1) EEOC/SHAC.....	147
	(3) Private Parties.....	147
	d. Exhaustion Requirements.....	148
	e. Scope of Suit.....	148
XII.	REMEDIES .....	149
	A. Non-Monetary Remedies .....	149
	1. Reinstatement.....	149
	B. Monetary Remedies .....	149
	1. Front Pay.....	149
	2. Back Pay and Related Costs.....	150
	a. Back Pay: A Legal or Equitable Remedy?.....	150
	3. Compensatory and Punitive Damages.....	150
	C. Attorneys' Fees .....	151

## **Special Issues of Public Employees**

Chapter 23 - Public Employees .....	153
II. STATUTORY TERMS OF EMPLOYMENT .....	153
B. Provisions for Leaves of Absence .....	153
2. Annual Leave.....	153

## **Table of Contents**

---

a.	Unused Leave.....	153
3.	Other Provisions Related to Sick and Annual Leave.....	153
b.	Breaks in Service.....	153
4.	Administrative Leave.....	154
a.	Court Leave.....	154
c.	Temporary Disabilities.....	154
5.	Military Leave.....	154
a.	With Pay.....	154
6.	Extended Disability Leave.....	154
C.	Wages and Hours .....	155
1.	Wages.....	155
b.	Uniform Classification Plan.....	155
e.	Salary Decreases.....	155
2.	Hours.....	155
b.	Overtime.....	155
III.	GRIEVANCE SYSTEM .....	156
C.	Grievance Procedures .....	156
D.	Composition, Procedures, and Powers of the State Employee Grievance Committee .....	156
1.	Membership.....	156
IV.	TEACHER LAWS IN SOUTH CAROLINA .....	156
B.	Definition of Teacher .....	156
F.	Teacher Contract Levels .....	156
1.	Induction Contract.....	156
2.	Annual Contract.....	157
V.	WHISTLEBLOWER STATUTE .....	157
B.	What is Whistleblowing? .....	157
F.	Employer Defenses .....	157
<b>Chapter 24 - Constitutional Rights of Public Employees .....</b>		<b>159</b>
II.	FREEDOM OF EXPRESSION .....	159
B.	Public Concern .....	159
III.	FREEDOM OF ASSOCIATION .....	159
A.	Generally .....	159

---

## Table of Contents

C.	Political Affiliation – Policy-Making Position Exception .....	159
IV.	FREEDOM OF RELIGION .....	159
A.	Free Exercise Clause .....	159
B.	Establishment Clause .....	160
VI.	RIGHT TO PRIVACY .....	161
A.	Searches of Assigned Spaces, Storage, and Electronically Stored Information .....	161
VIII.	EQUAL PROTECTION OF PUBLIC EMPLOYEES .....	161
A.	Procedural Due Process .....	161
3.	Opportunity to Be Heard.....	161
X.	CONSTITUTIONAL REMEDIES .....	161
A.	Eleventh Amendment Immunity, Individual Liability, and Qualified Immunity .....	161

### **Alternative Dispute Resolution**

<b>Chapter 25 - Alternative Dispute Resolution</b> .....	163	
II.	AUTHORITY FOR ADR IN THE LABOR AND EMPLOYMENT CONTEXT.....	163
A.	Statutory Authority .....	163
1.	Federal Arbitration Act.....	163
B.	Judicial Authority .....	163
1.	South Carolina Court-Annexed ADR.....	163
III.	ENFORCEMENT OF ARBITRATION CLAUSES .....	164
A.	Public Policy and Contract Principles .....	164
C.	Unconscionability .....	164
D.	Waiver of the Right to Arbitrate .....	164
VI.	ARBITRATION PROCEEDINGS .....	165
VII.	MEDIATION PROCEEDINGS .....	165
A.	Pre-Mediation .....	165
1.	Selection of a Mediator.....	165
2.	Setting of Date, Time and Location.....	166
B.	Mediation Settlement Conference .....	166
1.	Must All Parties Attend the Mediation in Person?.....	166
7.	Private Caucus.....	167
8.	Wrapping Up.....	167

## **Table of Contents**

---

9.	Publication.....	168
10.	Enforcing the Settlement Agreement.....	168
 <b>Statutes of Limitations</b>		
<b>Chapter 26 - Statutes of Limitations in Employment Cases .....</b>		169
II.	DISCRIMINATION CLAIMS .....	169
B.	Discrimination Statutes Requiring Exhaustion of Administrative Remedies .....	169
C.	Exceptions to Requirement for Exhaustion of Administrative Remedies .....	170
<b>Chapter 27 - Protections for Pregnancy, Lactation, and Related Conditions.....</b>		171
I.	INTRODUCTION.....	171
II.	FEDERAL LAWS.....	171
A.	Pregnant Workers Fairness Act.....	171
1.	Coverage.....	172
2.	Prohibitions.....	173
3.	Definitions Specific to the PWFA.....	173
a.	Qualified.....	174
b.	Known Limitations.....	175
c.	Pregnancy, Childbirth, or Related Medical Conditions.....	176
4.	Reasonable Accommodations.....	176
5.	Undue Hardship.....	178
6.	Enforcement and Remedies.....	179
B.	Providing Urgent Maternal Protections for Nursing Mothers Act.....	179
1.	Coverage.....	179
2.	Exemptions.....	179
3.	Requirements.....	180
a.	Reasonable Break Time.....	180
b.	Private Place.....	181
c.	Compensation.....	182
4.	Enforcement and Remedies.....	182

---

**Table of Contents**

---

III.	STATE LAWS.....	183
A.	South Carolina Pregnancy Accommodations Act.....	183
B.	South Carolina Lactation Support Act.....	184
C.	Paid Parental Leave.....	185
1.	Paid Parental Leave for Birth of a Child or Placement of a Foster Child.....	185
2.	Paid Parental Leave for Adoption.....	187