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# US Regional Employment 2021

Louisiana: Law & Practice  
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# LOUISIANA

## Law and Practice

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## CONTENTS

<b>1. Current Socio-Economic, Political, and Legal Climate: Context Matters</b>	<b>p.3</b>	<b>5. Termination of the Relationship</b>	<b>p.7</b>
1.1 The Impact of COVID-19 on the Workplace	p.3	5.1 Addressing Issues of Possible Termination of the Relationship	p.7
1.2 "Black Lives Matter," "Me Too," and Other Movements	p.3	<b>6. Employment Disputes: Claims, Dispute Resolution Forums, and Relief</b>	<b>p.8</b>
1.3 "Gig" Economy and Other Technological Advances	p.3	6.1 Contractual Claims	p.8
1.4 Decline in Union Membership?	p.3	6.2 Discrimination, Harassment, and Retaliation Claims	p.8
1.5 National Labor Relations Board	p.3	6.3 Wage and Hour Claims	p.9
<b>2. Nature and Import of the Relationship</b>	<b>p.4</b>	6.4 Whistle-Blower/Retaliation Claims	p.9
2.1 Defining and Understanding the Relationship	p.4	6.5 Special Training and Resolution Approaches	p.10
2.2 Immigration and Related Foreign Workers	p.4	6.6 Class or Collective Actions	p.10
2.3 Collective Bargaining Relationship or Union Organizational Campaign	p.4	6.7 Possible Relief	p.10
<b>3. Interviewing Process</b>	<b>p.5</b>		
3.1 Legal and Practical Constraints	p.5		
<b>4. Terms of the Relationship</b>	<b>p.5</b>		
4.1 Restrictive Covenants	p.5		
4.2 Privacy Issues	p.6		
4.3 Discrimination, Harassment, and Retaliation Issues	p.6		
4.4 Workplace Safety	p.7		
4.5 Compensation and Benefits	p.7		

## 1. CURRENT SOCIO-ECONOMIC, POLITICAL, AND LEGAL CLIMATE: CONTEXT MATTERS

### 1.1 The Impact of COVID-19 on the Workplace

The COVID-19 pandemic has changed the workplace in the short-term and likely in the long-term. Many employers were forced to find ways for employees to work from home, and the procedures put into place will allow employees to perform their jobs remotely when they are unable to go to the office. On the flip-side, this will likely create expectations for employees who want to spend more time working remotely; employers should evaluate policies and job descriptions to make sure they align with the company's goals.

Another major shift has been paid leave. With the Families First Coronavirus Response Act, many employees were entitled to pay when out of work for specified reasons. This is likely to place increased focus on legislation requiring paid leave for illness and childcare and create expectations from employees.

### 1.2 “Black Lives Matter,” “Me Too,” and Other Movements

Social movements impact employees' relationships with their employers, as they impact society more generally. In the face of these movements, it is important for employers to adapt and be aware of and responsive to social conditions.

Employee retention and success is a function of employee morale and happiness in the workplace. Employers who fail to adapt to changing social mores may experience difficulties in retaining a happy and productive workforce. Employers who run afoul of the law (see **6.2 Discrimination, Harassment, and Retaliation Claims**) may face even greater consequences in the form of litigation.

While it is difficult to precisely quantify the impact of these types of social movements on employees' willingness to switch jobs, demand different terms and conditions of employment or litigate, employers must remain aware of these social forces and be cognizant of them while working to provide a positive work environment for all employees and comply with state and federal anti-discrimination law.

### 1.3 “Gig” Economy and Other Technological Advances

There is no information available in this jurisdiction.

### 1.4 Decline in Union Membership?

Across the nation, researchers and journalists have noticed certain unionization trends related to the pandemic. A January report from *Time* magazine noted that, particularly in the healthcare industry and for other employees considered “front-line workers”, there has been increased collective action on the part of employees. Whether and to what extent these employees form unions will remain to be seen as time goes on.

In industries that have transitioned to many employees working from home as a result of the pandemic, there may be a decrease in employee collective action for the simple reason that employees are no longer in close proximity with each other throughout the working day.

### 1.5 National Labor Relations Board

In April 2021, employers around the Southern USA watched intently as workers attempted to form a union at an Amazon warehouse in Bessemer, Alabama. Many employers believed that, if the Amazon workers succeeded in unionizing, it could lead to a sweeping increase of union-related activity and unionization across the Southern USA. A vast majority of Amazon's employees at the Bessemer warehouse voted against unioni-

zation, and therefore the Southern USA did not see a noticeable uptick in union-related activity.

For established unions with collective bargaining agreements coming up for renewal during the pandemic, employees and their unions will likely place a greater emphasis on worker safety. Employers will have to consider and bargain with their employees' unions concerning safety protocols.

## **2. NATURE AND IMPORT OF THE RELATIONSHIP**

### **2.1 Defining and Understanding the Relationship**

Louisiana is an "at-will" employment state. Typically, when an employee is hired for an indefinite period of time (as are most employees), the employer may discharge the employee at any time for any reason not prohibited by law. Likewise, the employee is free to leave employment at any time without giving any reason. Unlike in many states, there are no public policy exceptions to employment at-will in Louisiana.

In Louisiana, when an employment contract is made for a fixed period of time, unless otherwise provided in the contract, an employee who is discharged without cause before the contract period expires may recover damages for breach of contract. Such a contract need not be in writing to be enforceable.

Employee handbooks, personnel policy manuals, written and unwritten employment policies, offer letters, and oral or written comments made in job interviews and performance reviews can be relied upon by employees as evidence of an enforceable employment contract. Best practice is to include in employee handbooks and any other written employment policies a statement

that such materials are merely guidelines and not a contract.

Non-compete and non-solicitation agreements are strictly limited in Louisiana. Such agreements are lawful only if:

- limited to no more than two years following termination of employment;
- they specify the "parish or parishes, municipality or municipalities, or parts thereof" in which competition and/or solicitation is prohibited; and
- "the employer carries on a like business therein" which necessitates describing the business.

Any clause in an employment contract with a Louisiana employee that purports to adopt another state's law as the governing law or that purports to require the employee to litigate any dispute arising under the agreement in any particular court is unenforceable unless expressly ratified by the employee after the occurrence of the event that is the subject of the dispute.

### **2.2 Immigration and Related Foreign Workers**

It remains to be seen whether COVID-19 will bring lasting changes to immigration policy and travel issues. In the short-term, however, there remain active travel restrictions that have an impact on both business and personal travel. Given that the world is still facing fresh waves of COVID-19, many are still acting to combat the rising number of cases rather than looking to the long-term policy.

### **2.3 Collective Bargaining Relationship or Union Organizational Campaign**

There is no information available in this jurisdiction.

## 3. INTERVIEWING PROCESS

### 3.1 Legal and Practical Constraints

A good general rule for both employment applications and job interviews is that all questions should be job-related. Put another way, if the information is not needed to decide whether the applicant is qualified for the job in question, the question should not be on the application form or asked during an interview. The following are some key items to take special note of on employment applications or during interviews.

- Age or date of birth – age is not relevant in most hiring decisions. However, because there are restrictions for certain occupations under child labor laws, it is permissible to ask an applicant to give their age if it is less than 18. Otherwise, best practice is to wait until after hiring the applicant to obtain an employee's date of birth.
- Sex, sexual preference, gender identity, race, religion and national origin – this kind of information is never relevant in making employment decisions.
- Citizenship – the safe practice is to ask questions about citizenship or work eligibility after an offer of employment is extended or to include a statement that only persons who are legally entitled to work in the USA are eligible for employment.
- Disabilities, health status, and medical history – most employers are prohibited from requiring pre-employment medical examinations or making pre-employment inquiries about disabilities, health status or medical history. Instead, it is essential to focus objectively on an applicant's ability to perform the essential functions of the job in question with or without reasonable accommodation.
- Smoking – Louisiana law prohibits employers from discriminating against applicants or employees because they are either smokers

or non-smokers. For example, an employer cannot refuse to hire an employee because he or she is a smoker.

## 4. TERMS OF THE RELATIONSHIP

### 4.1 Restrictive Covenants

Louisiana has unique laws when it comes to restrictive covenants. Any employer operating in Louisiana must familiarize itself with these rules, or it risks being unable to enforce its restrictive covenants. Louisiana courts have long recognized a strong public policy against the enforcement of restrictive covenants, so, for a covenant to be enforceable, it must comply with the strict requirements of Louisiana's restrictive covenant statute, La. R.S. 23:921.

La. R.S. 23:921 begins with a general prohibition on any contract that restrains trade, other than contracts that are explicitly allowed by later parts of the statute. Courts have held that restraints on trade include, as prime examples, agreements that prevent a former employee from competing against their former employer and agreements that prevent a former employee from soliciting his or her former employer's customers. Non-recruitment covenants, which prohibit solicitation of a former employer's employees, are not considered restraints on trade under Louisiana law and need not comply with the statute.

An applicable requirement across all non-competition and customer non-solicitation agreements in Louisiana is that the agreement must list the parishes, counties or municipalities in which the employee is prohibited from competing or soliciting customers. The company must carry on business in each of the geographic locations listed in order for the agreement to be enforceable. Louisiana courts have construed this requirement very strictly – courts almost

uniformly refuse to enforce restrictive covenants that fail to list parishes, counties and/or municipalities, even when those contracts include catch-all language attempting to prohibit competition in any parish or municipality where the company does business. Louisiana law also typically limits these agreements to two years in duration.

Employers cannot circumvent the statute by relying on a choice-of-law clause that specifies some state other than Louisiana's law will apply to interpretation of a restrictive covenant. The statute explicitly provides that choice-of-law provisions in restrictive covenants are not enforceable unless the employee ratifies the provision after a dispute has arisen under the contract.

Because of these provisions, it is extremely important that an employee consults La. R.S. 23:921 and seeks legal advice before asking Louisiana-based employees to execute restrictive covenant agreements.

#### **4.2 Privacy Issues**

Information privacy concerns should be paramount to any global entity. With nearly all company data and significant intellectual property existing in computerized platforms, departing employees sometimes attempt to misappropriate that information for use on behalf of a new employer.

Louisiana, like most other states, has a Uniform Trade Secrets Act that substantially tracks the Model Uniform Trade Secrets Act. The Act's protections are typically coextensive with the federal Defend Trade Secrets Act, which was signed into law in 2016 to provide federal protection for employers' trade secrets.

Like its federal counterpart, the Louisiana Uniform Trade Secrets Act requires employers to

take reasonable steps to protect their trade secret information. These steps can include limiting access to the information, requiring employees to sign confidentiality agreements, password protecting information, and preventing information from being downloaded and/or accessed outside of the company's premises.

Every employer should have policies in place regarding the protection of their confidential information, and should strongly consider requiring employees with access to confidential business information to sign confidentiality and non-disclosure agreements.

The COVID-19 pandemic has created new challenges for employers seeking to safeguard their confidential business information, as many employees are now working primarily if not exclusively from home. Employers should use VPN (virtual private network) software and continue to monitor employee company data usage to ensure that employees are not misusing confidential company information.

#### **4.3 Discrimination, Harassment, and Retaliation Issues**

It is difficult to precisely quantify how social movements such as "Black Lives Matter" and "Me Too" have impacted the employer/employee relationship, but employers must remain cognizant of these movements and ensure a fair and inclusive workplace in order to retain employees, encourage a productive workforce, and avoid potential litigation.

Louisiana law does not include any protections from discrimination or harassment that go beyond those protections offered by Title VII, so employers operating in Louisiana must be cognizant of their obligations under federal law.

## 4.4 Workplace Safety

Workplace safety regulations throughout the USA are enforced by the Occupational Safety and Health Administration (OSHA). OSHA applies uniform standards for workplace safety across all states.

In each state, including Louisiana, the conditions in the workplace must meet OSHA's standards. In just over 20 states, state law and state organizations impose certain safety requirements beyond what is required by OSHA. However, Louisiana is not one of these states, so there are no heightened safety requirements beyond what is required nationwide.

The pandemic has changed workplace safety considerations in many ways. Employers must now take adequate measures to decrease the risk of COVID-19 transmission in the workplace. OSHA is continuously updating its pandemic-related guidance, and is now considering a vaccination or weekly testing mandate on all employers of 100 or more employees. It is crucial for employers to remain up to date on the most recent OSHA guidance to avoid investigation and citation. See the [OSHA website](#) for further details.

## 4.5 Compensation and Benefits

Louisiana has a few specific compensation provisions. First, the wage payment statute (see **5.1 Addressing Issues of Possible Termination of the Relationship**) requires employers to pay employees final pay within 15 days or the next regular payday, whichever comes first. Second, Louisiana has a wage forfeiture statute which prohibits employers from requiring employees to forfeit wages for any reason; see La. R.S. 23:634. Louisiana also has a statute that prohibits employers from assessing fines and penalties against employees, except in the case of an employee's negligent or wilful damage to an employer's property. Finally, employ-

ers must provide notice of the frequency and method of payment to employees at the time of hire. If an employer fails to designate pay dates, the 1st and 16th of the month are designated as "default" pay dates; see La. R.S. 23:633.

As for employment-related benefits, Louisiana employers are required to provide workers' compensation benefits to employees in connection with work-related injuries. Employers are also required to pay into a state-funded system that provides unemployment compensation for qualifying employees. The funding comes from employer contributions, the amount of which are based on each employer's "experience rating" (generally, the employer's history of successfully asserted unemployment claims).

Louisiana has specific "leave" benefits for pregnancy/childbirth and military leave.

## 5. TERMINATION OF THE RELATIONSHIP

### 5.1 Addressing Issues of Possible Termination of the Relationship

Louisiana is an "at-will" employment state and therefore the employment relationship may be terminated by either the employer or the employee for any reason or no reason at all, with or without notice. The only way to alter the "at-will" nature of the relationship is by entering into a contract providing alternative terms and conditions, such as employment for a specific term.

Louisiana employers must pay employees all amounts due upon termination from employment, regardless of the reason for the termination of the employment relationship, within 15 days or the next regular payday, whichever comes first; see La. R.S. §23:621. Failure to make timely payment of all amounts due following termination subjects an employer to poten-



tial penalty wages of up to 90 days of pay, plus attorneys' fees. An employee's accrued, unused vacation is considered an amount due under La. R.S. La. R.S. §23:621 and must be timely paid along with other amounts due.

Louisiana has a "mini-COBRA" statute that requires employers with fewer than 20 employees (employer not subject to federal COBRA) to offer continuation coverage under their group medical plan, at their own expense, for up to 12 months following termination from employment; see La. R.S. 22:1046.

Employees who are terminated for "misconduct connected with their employment" or who leave their employment voluntarily "without good cause attributable to a substantial change by the employer" are disqualified from receiving unemployment benefits; see La. R.S. 23:1601. Conversely, employees who are terminated for reasons other than "misconduct", or who leave employment voluntarily for "good cause", qualify for unemployment benefits.

Louisiana does not have a "mini-WARN" statute, and therefore advance notice governing layoffs or reductions in force are governed by the federal WARN statute.

## **6. EMPLOYMENT DISPUTES: CLAIMS, DISPUTE RESOLUTION FORUMS, AND RELIEF**

### **6.1 Contractual Claims**

The principal type of contractual claim that may be asserted by an employee against an employer is breach of contract. In Louisiana, a breach of contract claim can be express or implied, meaning that a written contract does not have to exist in order to assert a breach of contract claim against an employer. Other than claims under a

collective bargaining agreement, contract-based claims are asserted in state court. Damages can vary from specific performance to monetary damages, depending on the circumstances and the language in the contract (if applicable).

### **6.2 Discrimination, Harassment, and Retaliation Claims**

Like every other US state, employers in Louisiana may be faced with employment-related claims pertaining to alleged discrimination, harassment and retaliation. While Louisiana has a Human Rights Commission charged with investigating these claims, typically employees' attorneys in Louisiana initiate legal action by filing charges with the federal Equal Employment Opportunity Commission. After the EEOC conducts initial investigations, employees may proceed with their claims in federal court.

While it is difficult to quantify the direct impact of social movements on employment discrimination claims, it seems possible that the current social climate will encourage employees to pursue legal action who may not have pursued legal action in the past.

The COVID-19 pandemic has brought about the possibility for claims of alleged discrimination on the basis of religion and disability. As companies consider whether to mandate vaccination for COVID-19, they must consider the implications when an employee seeks a religious or disability-based exemption. While most courts have agreed that employers may generally mandate vaccination, employers must honor requests for religious exemptions based on a good faith religious belief.

Louisiana has no laws that prohibit the use of non-disclosure agreements. Typically, settlement agreements for discrimination claims include confidentiality and non-disparagement clauses that prohibit either party from discuss-



ing the subject matter of the dispute being settled. These clauses can be important for an employer seeking to avoid negative publicity or morale impacts on the remaining members of its workforce.

## 6.3 Wage and Hour Claims

Generally, the Fair Labor Standards Act establishes the minimum wage, overtime and child labor laws for employers engaged in industries affecting interstate commerce, regardless of the number of employees. Employees can bring claims for unpaid wages (such as minimum wage or overtime) under the FLSA in court or to the U.S. Department of Labor. The statute of limitations under the FLSA is two years, but if the violation is willful then it is extended to three years. Employees can recover unpaid wages, liquidated damages (equal to the amount of unpaid wages), and reasonable attorneys' fees and costs. (See also **6.6 Class or Collective Actions.**)

Louisiana law does not mandate a minimum wage higher than the federal minimum. However, some local governments (like the city of New Orleans) require certain companies doing business with the city to pay a minimum "living wage" above the federal minimum. Louisiana law also does not have its own overtime pay requirements.

Louisiana employers must pay employees all amounts due upon discharge or resignation within 15 days or by the next regular payday – whichever comes first – following discharge or resignation. Failure to make timely payment of all amounts due following discharge or resignation subjects an employer to liability for penalty of up to 90 days of pay calculated at the employee's regular daily rate of pay plus the employee's attorneys' fees.

In Louisiana, an employee's accrued, unused vacation pay is considered an amount due and must be timely paid, along with all other amounts due following discharge or resignation. Indeed, any employment policy or contract requiring an employee to forfeit compensation earned by the employee for any reason is unlawful in Louisiana. Likewise, Louisiana employers are prohibited from assessing fines against their employees. However, an employer may deduct from an employee's wages the cost of any damages caused to the employer's property by the employee's negligence or willful misconduct.

The prevalence of work-from-home arrangements during the COVID-19 pandemic may spur off-the-clock claims where employees say they were working outside of the hours reported. Additionally, employers may see claims for compensation related to time spent obtaining employer-mandated COVID-19 tests or vaccinations.

## 6.4 Whistle-Blower/Retaliation Claims

Under both federal and Louisiana law, it is unlawful to retaliate against an employee for engaging in protected activity – essentially, asserting their rights to be free from employment discrimination, which includes harassment. Protected activity includes things like filing a charge of discrimination with the U.S. Equal Employment Opportunity Commission or the Louisiana Commission on Human Rights, communicating with a supervisor about harassment, furnishing information regarding a complaint or investigation about discrimination, or requesting an accommodation because of a disability or a religious practice.

Louisiana law makes it unlawful to discharge or engage in any form of discriminatory or retaliatory action against an employee because the employee has asserted a claim under the Louisiana Workers' Compensation Law.

Louisiana law also makes it unlawful to discharge or deny employment to an individual because of a voluntary assignment or single garnishment of wages. However, it is permissible to discharge an employee whose earnings have been subjected to three or more garnishments for unrelated debts over a two-year period, but a garnishment resulting from an accident or illness that causes an employee to miss ten or more consecutive work days cannot be considered one of the three.

The Louisiana Whistleblower Protection Law prohibits employers from discharging or engaging in any type of discriminatory or other retaliatory action against employees for disclosing or threatening to disclose violations of law, for refusing to engage in unlawful conduct, or providing testimony to law enforcement authorities in connection with an investigation of a violation of law by the employer.

### **6.5 Special Training and Resolution Approaches**

Louisiana has no specific training requirements for discrimination or harassment. However, the best practice is to have a harassment policy that is widely disseminated and available and to provide periodic training to managers.

While some states have enacted legislation that limits the use of confidentiality or non-disclosure provisions in settlement agreements that resolve allegations of sexual harassment, other forms of harassment and discrimination, Louisiana has not.

### **6.6 Class or Collective Actions**

Class actions may be brought in Louisiana under many different federal statutes (such as Title VII) or Louisiana law (such as the Louisiana Employment Discrimination Law). Collective actions may be brought in Louisiana under the FLSA; employees often seek collective status and ask

the court to approve notice to all employees who may have similar claims.

Class and collective action waivers and their enforceability are governed by federal law and are typically enforceable unless there are contract formation problems.

### **6.7 Possible Relief**

The Louisiana Employment Discrimination Law allows for the recovery of back pay, front pay, compensatory damages and attorneys' fees where a violation is found. Punitive damages are not available under state law. However, unlike federal law, state law does not cap or limit the amount of compensatory damages that may be awarded in the event of a violation. Claims under the LEDL must be brought in court within one year after the alleged discriminatory conduct; however, the one-year prescriptive period can be stayed or suspended for up to six months if the employee files a charge of discrimination under federal law with the U.S. Equal Employment Opportunity Commission.

The LEDL also established the Louisiana Commission on Human Rights, a state-level EEOC-type agency empowered to investigate charges of employment discrimination in violation of state law. The creation of the LCHR makes Louisiana a "deferral" state for purposes of federal discrimination law, meaning the time period for filing an EEOC charge is extended from 180 to 300 days following the alleged discriminatory conduct. However, a Louisiana plaintiff is not required to file a charge with either the LCHR or the EEOC before filing suit under the LEDL.

Under the Louisiana Wage Payment Act, failure to make timely payment of all amounts due following discharge or resignation subjects an employer to liability for a penalty of up to 90 days of pay calculated at the employee's regular daily rate of pay, plus the employee's attorneys' fees.

Any person denied employment solely because of a voluntary assignment or garnishment of wages shall have a right to reasonable damages.

Under the Louisiana Whistleblower Protection Law, an employee may file suit in a district court where the violation occurred. If the court finds the law has been violated, the plaintiff may recover from the employer damages, reasonable attorneys' fees and court costs.

**Jones Walker LLP** is one of the largest law firms in the USA, serving local, regional, national and international businesses in a range of markets and industries. Its 355 attorneys are located in Alabama, Arizona, Florida, Georgia, Louisiana, Mississippi, New York, Texas and Washington, DC. The firm offer clients one of the most diverse and experienced labor and employment practices in the region and represents clients nationwide. Jones Walker's experience extends to defending claims involving race, sex, age and disability discrimination, as well as sexual

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