

Chapter 5

MISCELLANEOUS ALABAMA EMPLOYMENT LAWS

Quick reference to subjects discussed in this chapter:

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A. INTRODUCTION

In addition to the employment laws discussed in other chapters, there are other laws (some of which are outside of the realm of employment law) with which Alabama employers may need to be familiar.

B. SUMMARY OF THESE LAWS

1. Miscellaneous Alabama Statutes

a. Jury Duty

The employer’s obligations. Alabama law requires that any employee summoned to jury duty be excused from his employment for the day(s) required of him, upon exhibiting a jury summons to his superior. Additionally, any full-time employee, or employee who works a full-time schedule on a regular basis, is entitled to his usual compensation received from such employment less the fee or compensation he received for serving as such juror. (However, see note

concerning Attorney General Opinion 90-00190, below.) This does not apply to part-time employees (see “Frequently Asked Questions” below). *Note:* The Alabama Attorney General has concluded that the phrase “full-time employee” includes an employee who is paid hourly wages, as well as a salaried employee.

Alabama law provides that jurors will be compensated by the court in which they serve as jurors at the rate of \$10 per day, plus five cents for each mile traveled going to and returning from court.

According to an opinion which was issued by the Alabama Attorney General (Opinion 90-00190), the \$10 per day received by a juror for his services in state court is considered to be an expense allowance rather than a fee for service. Accordingly, employers may not deduct the daily \$10 “expense allowance” from the employee’s regular compensation. However, if a juror were to receive a *fee* in addition to an expense allowance, the fee may be deducted by the employer. State law also prohibits the discharge of an employee *solely* because he serves on a jury, as long as the employee reports to work on his next regularly scheduled hour. An unlawful termination under this statute would permit a suit for recovery of both actual and punitive damages.

Frequently Asked Questions Regarding Jury Service in Alabama

Q: The employee who has been summoned for jury service is a “key employee” – her job attendance is essential to the operation of the business. Can’t she be excused from jury service on that basis?

A: Alabama law provides that “excuse from jury duty is granted only in cases of extreme inconvenience, undue hardship, or public necessity.” If the employee’s absence from her employment will result in an extreme inconvenience or undue hardship to the employer, it is possible that the employee may be excused from service. However, the “inconvenience” and “hardship” contemplated by the law is that which would be experienced by the *employee*, not the employer.

Q: Is there a limit to the length of time during which a juror may serve?

A: No. Service depends upon court need and trial length.

Q: How can an employer verify that one of its employees served upon a jury?

A: Court clerks typically issue a certificate of jury service, or some other document bearing an official seal or insignia, to the juror as proof of jury service.

Q: Are employers required to pay part-time employees at their usual rate of compensation if they are summoned for jury duty?

A: No. Employers are not required to pay part-time employees their “normal” compensation when they serve as jurors.

Q: If one of an employer’s regular, full-time employees who normally works a number of weekly hours of overtime has been summoned for jury duty, is the employer obligated to pay him for more than 40 hours of work while he is serving as a juror?

A: No. Employers are only required to compensate the summoned employee at a rate equivalent to a 40-hour work week’s pay. Employers are not obligated to pay for overtime, even if the employee normally works overtime.

Q: An employee who has been summoned for jury duty is a third-shift worker. If she serves as a juror during the daytime, can the employer require her to continue to work on the third shift?

A: No. The attorney general has ruled (in Opinion 95-00007) that any second- or third-shift employee is placed on first-shift status by operation of law for the duration of his or her jury duty service. An employer cannot make an employee work during these shifts and is required to pay the employee first-shift wages if the employee works for the employer full-time. This includes the evening after jury service is concluded.

Q: If an employee is summoned to court as a juror, but is not chosen to serve, is he still entitled to receive an expense allowance and mileage reimbursement?

A: Yes. As a summoned juror, the employee is entitled to receive an expense and mileage allowance, regardless of whether the employee actually served on a jury that particular day. However, the employee is not authorized to receive an expense and mileage allowance if he is notified in advance that his services will not be needed for that day, or if he reports for service only to be excused.

Q: Can an out-of-state employer be required to pay Alabama residents who work out-of-state their usual compensation when they are summoned for jury duty? Or can the employer compensate them at comparable, in-state rates instead?

A: Alabama law requires *Alabama employers* to compensate full-time employees, or employees who work a full-time schedule on a regular basis, who serve as jurors at their *usual rate of compensation*, irrespective of where the work is performed. However, Alabama law does not require *out-of-state employers* to compensate Alabama residents who are summoned for jury duty at their usual rate of compensation.

b. Alabama Age Discrimination Act

Employers with 20 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year are prohibited from discriminating in employment matters against applicants or employees age 40 or over. Any employment practices authorized by the federal Age Discrimination in Employment Act are authorized by the Alabama law, and the remedies, defenses, and statute of limitations under the Alabama law are the same as those authorized by the federal Age Discrimination in Employment Act, except that a plaintiff shall not be required to pursue any administrative action or remedy prior to filing suit under this Act (i.e., an employee is not first required to notify the employer of his or her age discrimination claims, via any administrative agency or process, before filing suit against the employer). If a plaintiff brings a lawsuit pursuant to the Alabama law and later initiates a lawsuit in federal court

pursuant to the federal Age Discrimination in Employment Act, the state proceeding will be dismissed. No individual may recover under both the state and federal act.

See Chapter 10 for discussion of the federal Age Discrimination in Employment Act.

c. Tape Recording Conversations and Video Recordings

Alabama law allows parties to tape record conversations of people who are speaking with one another by telephone or in person if at least one of the parties being taped consents to the taping. The party consenting to the recording may be the party who is taping the conversation. As a practical matter, this means that if an individual places, receives, or joins a call or conversation, that individual may record the call or conversation without providing warning or notice that the call or conversation is being recorded. In certain circumstances, such recordings may later be used in legal and other proceedings. For additional information relating to the privacy of telephone conversations, please see Chapter 24.

It is a misdemeanor in Alabama to commit criminal surveillance, which encompasses visual observation or photography. Surveillance is defined as the secret observation of activities of another person for the purpose of spying on and invading the privacy of the person observed. A person violates the law if he intentionally engages in surveillance while trespassing in a private place, that is, a place where the subject might reasonably expect to be safe from such observation.

A private place is not a place where the public or "a substantial group of the public" has access. For instance, a hotel room would normally be considered private, but a hotel lobby would not. Mere observation from a public street does not constitute surveillance.

d. Blacklisting

A state statute provides that any "person, firm, corporation or association of persons who maintains what is commonly called a blacklist or notifies any other person, firm, corporation or association that any person has been blacklisted by such person, firm, corporation or association

or who uses any other similar means to prevent any person from receiving employment from whomsoever he desires to be employed by shall be guilty of a misdemeanor.” (Ala. Code § 13A-11-123.)

Alabama’s prohibition of blacklisting does not prohibit employers from giving references for present or former employees. (References are more fully discussed below in the section on defamation.) Employers should ensure that references are truthful, and employers should refrain from reporting to prospective employers that an employee has pursued claims under any federal discrimination law or has engaged in legitimate union activity.

e. Conspiracy to Interfere with Business

An Alabama state statute provides, “Two or more persons who, without a just cause or legal excuse for so doing, enter into any combination, conspiracy, agreement, arrangement or understanding for the purpose of hindering, delaying or preventing any other persons, firms, corporation or association of persons carrying on any lawful business shall be guilty of a misdemeanor.” (Ala. Code § 13A-11-122.)

f. Picketing

Alabama has a law forbidding any attempt to prevent the peaceable exercise of any lawful industry, business or calling. (Ala. Code § 25-7-9.) Under this law, unions may not attempt to prevent others from working or doing business with a company by engaging in violence, threats of violence, or duress during picketing.

g. Safety

Employers are required by Alabama statute to “furnish employment which shall be reasonably safe for the employees engaged therein and shall furnish and use safety devices and safeguards and shall adopt and use methods and processes reasonably adequate to render such employment and the places where the employment is performed reasonably safe for his employees and others who are not trespassers, and he shall do everything reasonably necessary to protect the life, health and safety of his employees and others who are not trespassers.” (Ala. Code § 25-1-1.)

h. Wages Owed to Deceased Employee Who Has No Will

When an employee dies without a will, and wages are due to be paid to that employee, the employer may relieve itself from liability by paying the amount to the surviving spouse. If there is no surviving spouse, then the wages may be paid to the person having legal custody and control of the employee's minor child or children. (Ala. Code § 43-8-115.) However, the employer's interest may be better served by holding the wages until presented with testamentary papers by the administrator (or executor if the employee had a will) of the employee's estate.

i. Alabama Trade Secrets Act

Trade secrets are protected from misappropriation by the Alabama Trade Secrets Act. Misappropriation of a trade secret can result in equitable relief (e.g., injunction), the payment of actual and punitive damages, the recovery of lost profits, and attorney's fees.

There is a two-year statute of limitations from the time the misappropriation is discovered or from the time when it should have been discovered by the exercise of reasonable diligence. (Ala. Code § 8-27-1 et seq.) Employers may be able to enhance the protection of confidential data by entering into confidentiality agreements with their employees, agents, and subcontractors.

j. Voting Leave

Alabama does not have laws which require employers to release employees from their employment for any period of time to participate in voting in state or federal elections.

k. Funeral Leave

Alabama does not have laws which require employers to release employees from their employment for any period of time to attend funerals. Nonetheless, it is not uncommon for employers to adopt funeral leave policies for the benefit of their employees. Typically, funeral leave provides time off from work due to a death in the family. Eligible employees usually receive an established number of days of leave per occurrence. However, some plans vary the number of days off depending upon the employee's relationship to the

deceased. For example, a plan may provide three days off for the death of a spouse, parent, or child, but only one day off for the death of other relatives. For employers who do not have a formal funeral leave plan, some may provide an informal benefit or allow employees to use other types of paid leave (such as paid sick leave days) to attend funerals.

I. Alabama Clean Indoor Air Act

The Alabama Clean Indoor Air Act generally prohibits any person from smoking in a place of employment, except in a designated smoking area which complies with the provisions of the Act. Some places of employment, such as bars and lounges, are exempt from the requirements of the Act.

Most employers may designate a smoking area. However, some types of businesses, such as health care facilities, must be kept entirely smoke-free. Smoking areas cannot be located in common areas. If a smoking area is designated, existing physical barriers and ventilation systems must be used to minimize the toxic effect of smoke. Further, unless the employer's clientele dictates otherwise, no more than one-fourth of the total square footage in any public place within a single enclosed area can be designated as a smoking area.

The owner, operator, manager, or other person in charge of a facility must post "No Smoking" signs, or the international "No Smoking" symbol, in areas where smoking is prohibited. "Smoking Area" signs must also be posted in designated smoking areas.

Employers who observe a person smoking in a non-smoking area must inform the person that smoking is not permitted in that area by law. The Alabama Department of Public Health may fine an employer for failure to comply with the Act.

The Act encourages (but does not require) employers to adopt a written smoking policy. If the employer adopts a written smoking policy, it must (1) give any employee the right to designate his or her individual work area as a nonsmoking area and to post an appropriate sign provided by the employer, and (2) prohibit smoking in all common work areas, unless a majority of the workers who work in that area agree that a smoking area will be designated.

Further, the employer must communicate the policy to all employees within three weeks of its adoption and supply upon request a written copy of the smoking policy to any existing or prospective employees.

2. Other Legal Concepts and Doctrines

a. Employment or Termination-at-Will

Under Alabama law, the employment relationship is terminable “at will” unless a contract provides otherwise. An “at will” employee may be terminated at any time, for a good reason, bad reason, or no reason at all.

Where an employee is terminable at will, the Alabama Supreme Court has previously refused to recognize any cause of action for wrongful discharge in violation of public policy or for an alleged breach of good faith and fair dealing.

For a discussion of the distinction between the doctrines of “at will” employment and Alabama’s status as a “right to work” state, please see Chapter 2.

b. Contracts of Employment

An employer and employee may enter into an express or implied agreement which operates to *modify* the at will employment relationship. Such contracts may limit (1) the employer’s ability to discharge an employee for any reason, and/or (2) an employer’s ability to discharge an employee at any time.

To be enforceable, an employment contract must generally be in writing if it is not capable of being performed within a year.

(1) Contract Requiring Just Cause For Termination

Employers and employees may agree on the types of events or circumstances which will justify the employee’s discharge. Such contracts may be express or implied.

Problems often arise where an employee claims that an employment policy, handbook, or some other document constitutes an actual or implied contract

which limits the circumstances under which the employer may discharge the employee. The Alabama Supreme Court has recognized that such documents can create an implied contract modifying the at will employment relationship under some circumstances.

Language in an employment policy, handbook, or other document can create a binding contract if (1) its language is specific enough to constitute an offer; (2) the offer has been communicated to the employee by issuance of the handbook, or otherwise; and (3) the employee accepted the offer by continuing to work after receiving the offer.

If an employer wishes to avoid a claim made by an employee that the policies contained in its employee handbook are not to be construed as an offer for a contract of employment, the employer may include a disclaimer to that effect, such as the following:

This Handbook and the policies contained herein do not in any way constitute, and should not be construed as, a contract of employment between the employer and the employee, or a promise of employment.

(2) Contract For Lifetime Employment or Employment For a Specific Duration

An employer sometimes wishes to guarantee employment for the employee's entire lifetime or for a specific duration. In order to establish a contract for that is not terminable "at will," the employee must establish the following elements: (1) an offer of lifetime employment or of employment for a specific duration, (2) consideration of substantial value, independent of the service to be performed, and (3) that the promissor had authority to bind the employer. In the commercial context, contracts of lifetime employment must be authorized by a resolution of the

board of directors or action by the corporate governing body.

Contracts which are intended to last for the duration of the employee's lifetime need not be in writing. Lifetime contracts are capable of being performed within a year, because it is possible the employee may die within a year of entering into the contract.

c. Hiring-Related Fraud Claims

Before an employee can maintain a claim for fraud against an employer in Alabama, the following elements must be shown:

- (1) A false representation concerning an existing material (i.e., meaningful or significant) fact,
- (2) A representation which (i) the defendant knew was false when made, or (ii) was made recklessly and without regard to the truth or falsity, or (iii) the truth or falsity of the representation was unknown when it was made, but the representation was made anyway;
- (3) Reliance by the plaintiff on the representation which was justified in the circumstances; and
- (4) Damages to the plaintiff which proximately resulted from his reliance on the false representation.

In the employment context, fraud claims often relate to representations made during the application and hiring process. For example, an applicant may allege fraud based on a company's alleged promise to hire that individual. In order to prove fraud based on a promise to perform some act in the future, the plaintiff must prove that at the time the promise was made, the promissor had no intent to perform the promise, or was unable to perform upon the promise, and had an intent to deceive the plaintiff.

d. Privacy

Alabama courts recognize the tort of "invasion of the right to privacy." The injury to one's right to privacy may arise from four distinct wrongs. They are:

- (1) The intrusion upon the plaintiff's physical solitude or seclusion;
- (2) Publicity which violates the ordinary decencies;
- (3) Putting the plaintiff in a false, but not necessary defamatory, position in the public eye; and
- (4) The appropriation of some element of the plaintiff's personality for a commercial use.

Of particular concern to employers are the wrongs identified in numbers (i) and (iii), above. With respect to intrusion into an individual's physical solitude or seclusion, the question is whether there was a wrongful intrusion into one's private activities in such manner as to outrage or to cause mental suffering, shame, or humiliation to a person of ordinary sensibilities. For example, this may occur when a male supervisor inquires of a female subordinate about her marriage or her sex life. It is not necessary that the employer invade some physically defined area or place. The invasion may be to the employee's personality or psychological integrity.

Publication is not a requirement to proving a privacy violation claim. For example, statements made by a supervisor to a subordinate could be the basis for a privacy violation claim even where the supervisor makes the statement in a discreet and private setting outside of the hearing of anyone else.

e. Defamation

The basic elements of defamation involve the following: false and defamatory language (or an act such as a physical search) on the part of the defendant, of or concerning the plaintiff, that is published to a third party, which thereby causes damage to the reputation of the plaintiff.

Defamation is most likely to arise in the employment setting when dealing with the issue of references or dealing with the investigation of employees and the resulting findings concerning such matters as drugs or theft.

Defenses to a claim of defamation are *truth* and *privilege* (both absolute and qualified).

Statements made in a judicial setting are considered to be absolutely privileged and therefore not subject to suit for defamation. Further, note that employee communications to company officials, whether written or oral, may be privileged under state law. For example, statements made by employees to the employer concerning matters related to the unemployment claims process may be absolutely privileged under Alabama law.

Section 25-4-116 of the Alabama Code (1975) states, in part:

All letters, reports, communications, and other matters, written or oral, from employer or employee to each other or to the director or any of his agents, representatives or employees, or to any official or board functioning under this Chapter, which shall have been written, sent, delivered or made in any connection with the requirements and administration of this Chapter, shall be absolutely privileged and shall not be the subject matter or basis for any civil action for slander or libel in any court.

Further, communications that are not absolutely privileged may be qualified or conditionally privileged. Qualified privileges are designed to protect straightforward business communications made in the performance of duty.

The test in Alabama for a qualified privilege is as follows: Where a party makes a communication, and such communication is prompted by a duty owed either to the public or to a third party, or the communication is one in which the party had an interest, and it is made to another having a corresponding interest, the communication is privileged, if made in good faith and without actual malice. The duty under which the party is privileged to make the communication need not be one having the force of legal obligation, but it is sufficient if it is social or moral in its nature and Defendant in good faith believes he is acting in pursuance thereof, although in fact he is mistaken.

The communication of statements to the officials at the State Unemployment Office is considered absolutely privileged for

the reasons stated above. This privilege may also extend to communications solely between company officials. If such statements are not considered to be absolutely privileged, intra-company communications among managers with a need to know would not be actionable because they would not be considered to have been published outside of the corporation. The sharing of information within corporate management is not considered publication. Indeed, the Alabama Supreme Court has held that communications among the management personnel or a corporation about the company's business do not constitute a publication.

In any event, for a matter to be actionable under a defamation claim, the employee must be damaged by the publication of a false and defamatory statement.

In cases where an absolute privilege applies, however, the statement will not be actionable, and in situations where the communication is protected by a qualified privilege, the Plaintiff must prove common law malice for the statement to be actionable. For example, a qualified privilege has applied in a case where an employee reported to his employer that he suspected another individual of theft. The Supreme Court noted that this fell within "a classic situation for which the qualified privilege was designed," i.e., a straightforward business communication made in the performance of duty.

As discussed earlier, in order for a statement to be considered defamatory, it must be communicated to someone other than the plaintiff, it must be false, and it must tend to harm the plaintiff's reputation and to lower him or her in the estimation of the community. Generally, in Alabama there is no publication where defendant communicates the statement directly to a plaintiff, who then communicates it to a third person.

f. Intentional Infliction of Emotional Distress (Tort of Outrage)

The Alabama Supreme Court has recognized the intentional tort of outrageous conduct where such conduct causes severe emotional distress. The tort has succeeded in only a few categories of cases: (1) cases involving wrongful conduct in the context of family burials, (2) cases involving the use of heavy-handed means to coerce the plaintiff to

settle an insurance claim (such as in claims for workers' compensation benefits), and (3) cases involving egregious sexual harassment.

To maintain a cause of action for intentional infliction of emotional distress, a plaintiff must establish four distinct elements, as follows:

- (1) That the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct;
- (2) That the conduct was extreme and outrageous;
- (3) That the actions of the defendant were the cause of the plaintiff's distress; and
- (4) That the emotional distress sustained by the plaintiff was severe.

In evaluating whether the tort could exist in a given fact situation, the focus is on the gravity of the conduct of the defendant(s), rather than the result of the conduct. As the Alabama Supreme Court has before held:

Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

Generally, and certainly with respect to an at-will employee, no cause of action for outrageous conduct may be maintained by an employee simply because of his discharge.

There is no cause of action for negligent infliction of emotional distress in Alabama.

g. Interference with a Business Relationship

The tort of intentional interference with contractual and business relations requires the following elements:

- (1) The existence of a contract or business relation;
- (2) Defendant's knowledge of the contract or business relation;
- (3) Intentional interference by the defendant with a contract or business relation;
- (4) Absence of justification for the defendant's interference; and
- (5) Damage to the plaintiff as a result of defendant's interference.

Such a claim may arise where one employer tries to entice an employee of another to break an employment agreement, or where an employee claims that someone caused him to lose his employment.

For the tort to be maintained, it must be maintained against one who is not a party to the business relationship. The Alabama Supreme Court has noted that an employee may not sue a co-employee for causing him to lose his employment with their employer, as the co-employees of the plaintiff are parties to the contractual relationship.

h. Negligent Hiring, Retention, Training, or Supervision

(1) Negligent Hiring

This cause of action is often asserted in personal injury actions, where someone claims that his injury was caused by the employer's negligence in hiring a particular employee. For example, if a professional truck driver is in an accident which injures a third party, the injured person may claim that his injury was caused by the employer's negligence in hiring the driver.

Generally, a plaintiff asserting this theory must show: (a) that the employee was unfit for hiring; (b) the

employer knew or should have known the employee was unfit; (c) the employer could foresee that the employee, through his or her employment, would come into contact with the plaintiff under circumstances creating a risk of danger to the plaintiff; (d) the plaintiff was injured; and (e) the employer's negligence was the proximate cause of the injury. Additionally, the plaintiff must show that his injury occurred while the employee was acting in the line and scope of his employment.

Thus, it is important for an employer to investigate the backgrounds of applicants before entrusting them to positions in which their failure to exercise reasonable care could endanger third parties.

(2) Negligent Retention

Negligent retention involves almost identically the same considerations as listed above for negligent hiring, with the only difference being timing.

When an employer knows, or should have known, of the employee's unfitness at the time of hiring, the plaintiff's claim is for negligent hiring. When that knowledge is acquired (or reasonably should have been acquired) after the employment relationship has commenced, and the employer fails to take action (such as an investigation, reassignment, or discharge), the plaintiff's claim is for negligent retention.

(3) Negligent Training or Supervision

This cause of action, too, is similar to those discussed above. A plaintiff may recover under this theory if an employee causes him injury because of the employer's failure to use reasonable care in supervising, training, and/or monitoring that employee. Although employers usually are not liable for acts of their employees which are not done in the line and scope of employment, an employer may be under a duty to exercise reasonable care to control its employees acting outside the scope of their

employment if the employee is on the employer's premises or using the employer's property.

Unlike claims of negligent hiring or retention, plaintiffs asserting this theory need not show that the employee was unfit. Under this theory, although the employee causes the injury, the employer commits the wrong by failing to provide reasonable training or supervision which is appropriate to the level of danger involved in the employee's job.

C. PRACTICAL SUGGESTIONS FOR EMPLOYERS

1. In the hiring process, employers should:
 - a. Confirm or communicate job offers in writing, stating the terms of the offer and indicating that the offer supersedes any prior representations that were made to the applicant about his compensation or employment tenure. Reaffirm that the employment is "at will."
 - b. Notify the applicant that company enhancements communicated to the applicant, such as benefits, manuals, and the like, are not evidence of, or intended to be construed as, an employment contract.
 - c. Consider requiring individuals to sign employment contracts. A written employment contract often is an employer's most effective defense to a breach of contract or fraud claim. At a minimum, ask the employee sign a copy of the offer letter.
 - d. Review the recruiting process with employees and supervisors who are involved in same, along with the legal implications of their representations, so that they can distinguish between "puffing" and making a representation upon which an applicant could fairly rely.
 - e. Supervisors should be made aware of the potential traps in the hiring process. If, during the employment process, a prospective employee writes a letter to the employer outlining what he believes to be the terms of employment, it is imperative that the employer respond to that letter, in writing, clarifying any misstatements by the employee and pointing out the limitations of the employment relationship.

2. Note that with respect to the common law torts, in many instances individual managers and supervisors may be named as defendants, as well as their employer.
3. Discussions about employees among management should be limited to those with a “need to know.” Further, information that is personal to employees should be kept confidential; and employers should permit only limited access to employee information. Further, employers are encouraged to adopt a privacy policy with respect to employee information.
4. Any medical information related to employees should be maintained in a file separate and apart from employee personnel files. Additionally, results from any type of testing program should be maintained separately as well.
5. It is not uncommon for employees to demand to examine the contents of their personnel files. And while it is true that employers are obligated to allow employees to have access to certain medical records upon request (such as the result of a drug test conducted pursuant to U.S. Department of Transportation regulations), employees who work in Alabama’s private sector do not have an entitlement, under Alabama law, to review their personnel files. Of course, employers may choose to adopt policies which allow their employees to inspect their personnel files by complying with specified procedures, but such policies should only be adopted after careful consideration and consultation with counsel. (Some public employees, such as public school employees have a right, under Alabama law, to receive copies of their personnel files, but this right does not extend to employees who work in the private sector.)
6. In many instances, employers who give out references regarding former employees will be protected from claims of defamation based upon a qualified privilege. *However*, qualified privileges may be lost where publication is excessive or malice is shown. Further, the fact that a former employee has signed a release with respect to the granting of a reference does not serve as an absolute bar to liability. If an employer chooses to provide a reference, it is recommended that the request be in writing. An employer’s response to such a request should be limited to factual data which may be supported if challenged.

CONTACT INFORMATION:

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ADDITIONAL RESOURCES:

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