

SC SHRM CONFERENCE - 2019

“Sink or Swim – Challenging Your HR Skills”

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1. In South Carolina, a current employee is legally entitled to review his or her personnel file.

A. True
B. **False**

South Carolina does not require an employer to allow an employee to review or otherwise access the employee's personnel file. However, an employer may create such a right or expectation for an employee by affirmatively stating in an employee handbook that employees can review their personnel file upon request.

2. In order to qualify for FMLA leave, an employee must have worked for his/her employer for _____ and must have worked _____ hours during the twelve months prior to taking leave.

A. 12 months; 2,080 hours
B. 12 months; 1,200 hours
C. 6 months; 1,200 hours
D. **12 months; 1,250 hours**

3. Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), “employer” is defined as any entity with **15** or more employees that pays salary or wages for work performed or that has control over employment opportunities.

A. True
B. **False**

USERRA applies to all employers regardless of size – even employers with **1** employee.

4. Under the Fair Labor Standards Act (FLSA) regulations, to meet the executive exemption, an employee must “regularly and customarily” supervise the work of how many employees?

A. One (1) or more full-time employee or his/her equivalent

- B. **Two (2) or more full-time employees or their equivalent**
- C. At least four (4) part-time employees or at least two (2) full-time employees or their equivalent
- D. At least (4) or more full-time employees or their equivalent

Under the FLSA regulations, to qualify for the executive/supervisory exemption, an employee must regularly and customarily supervise the equivalent of at least two (2) full-time employees, e.g., 2 full-time employees or any equivalent number/mixture of full-time and part-time employees that adds up to 80 hours supervised per week.

5. Which of the following deductions from salary will not convert an exempt employee into an overtime-eligible employee?
- A. Full day absences for personal reasons other than sickness or disability
 - B. Full day absences due to illness or injury if bona fide sick pay/disability plans are in place of if the employee takes unpaid FMLA leave
 - C. Offsets for amounts received by the employee for jury duty, witness fees, or military pay
 - D. **All of the above**

Under the FLSA, deductions from an exempt employee are permissible for the following reasons:

- 1. When the employee is absent from work for one or more full days for personal reasons other than sickness or disability
 - 2. For absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness
 - 3. To offset amounts employees receive as jury or witness fees, or for military pay
 - 4. For penalties imposed in good faith for infractions of safety rules of major significance
 - 5. For unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions.
 - 6. During the first and last weeks of employment if the employee works a partial week
 - 7. For weeks in which the employee takes unpaid leave under the FMLA
6. Under South Carolina's 2004 employment at-will statute, an employee handbook will not be considered a contract of employment if it includes a disclaimer on the first page in _____ and _____ letters, and the employee signs the disclaimer.

- A. **Underlined & Capital**
- B. **Bold & Capital**

- C. Bold & Underlined
- D. Italicized & Capital

S.C. Code Ann. § 41-1-110 states in relevant part as follows:

It is the public policy of this State that a handbook, personnel manual, policy, procedure, or other document issued by an employer or its agent after June 30, 2004, shall not create an express or implied contract of employment if it is conspicuously disclaimed. For purposes of this section, a disclaimer in a handbook or personnel manual must be in underlined capital letters on the first page of the document and signed by the employee.

7. Under the FLSA, private employers may compensate non-exempt employees for overtime hours worked by paying overtime or providing compensatory time to employees.

- A. True
- B. False**

The FLSA does not permit private employers to use compensatory time to compensate non-exempt employees for overtime hours worked under any circumstances. The FLSA does allow public employers to use compensatory time to compensate non-exempt employees for overtime hours worked.

8. Under the FMLA, a covered employer must allow a qualified employee to take intermittent leave (a) to care for a family member with a serious health condition or for the employee's own serious health condition; and (b) following the birth or placement of a child for adoption.

- A. True
- B. False**

The FMLA does require an employer to allow a qualified employee to take intermittent leave to care for a family member with a serious health condition or for the employee's own serious health condition.

The FMLA does not require an employer to allow a qualified employee to take intermittent leave for either the birth or placement of a child for adoption; however, an employer may choose to allow such intermittent leave.

9. The South Carolina Pregnancy Accommodations Act (SCPAA) applies to South Carolina employers with _____ employees.

- A. 2 or more
- B. 15 or less**

- C. 15 or more
- D. 20 or more

The SCPAA aligns with most federal anti-discrimination statutes and applies to South Carolina employers with 15 or more employees.

10. Under the FLSA, an employer must provide a reasonable break time for an employee to express breast milk for her nursing child for _____ after the child's birth each time such employee has need to express milk.
- A. 6 months
 - B. 1 year**
 - C. 2 years
 - D. There is no time limitation

According to the Department of Labor, employers are required to provide "reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk." Employers are also required to provide "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk."

Employers are required to provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother.

Employers with fewer than 50 employees are not subject to this requirement if compliance would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer's business. All employees who work for the employer, regardless of work site, are counted when determining whether this exemption may apply.

Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, when employers provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time.

11. Under the South Carolina Payment of Wages Law, "Wages" includes _____, _____, and _____ payments that are due to an employee under any employer policy or employment contract.
- A. Vacation, Holiday, and Personal Time
 - B. Holiday, Sick Leave, and Personal Time
 - C. Vacation, Holiday, and Sick Leave**

D. None of the above

South Carolina employers are not required to pay a terminated employee for accrued, unused vacation time, sick leave, or personal time following termination of employment. However, an employer can obligate itself to do so by remaining silent on how this issue will be handled or by affirmative language in an employee handbook. This can become even more problematic because these types of payments, if owed, are considered “wages” under South Carolina law. Why is that the case?

Employers that do not want to pay terminated employees these types of accrued, unused benefits should make sure their employee handbooks expressly address this issue.

12. Which of the following group employee welfare benefits plans are governed by the Employee Retirement Income Security Act (“ERISA”)?

A. **A plan sponsored by a private employer with 5 employees**
B. A plan sponsored by a governmental entity
C. A plan sponsored by a church
D. All of the above

Perhaps the more important question is “why should I care?” Let’s talk about that.

13. A South Carolina employer may not prohibit an employee who possesses a valid concealed weapons permit (“CWP”) from carrying a concealed handgun in the workplace.

A. True
B. **False**

A South Carolina employer may prohibit a CWP holder from carrying a concealed handgun in the workplace – period.

What is the “workplace” and what steps must an employer take?

14. Under the FMLA, when determining whether an employer with multiple facilities meets the 50 employee threshold, what is the appropriate method to measure whether multiple facilities are within a 75 mile radius of one another?

A. Straight line miles
B. **Surface road miles**
C. The method most favorable to the employee
D. The method most favorable to the employer

Simple answer. Always look at surface road miles, but employers must aggregate all facilities within any given 75 mile radius.

15. What are the COBRA continuation coverage qualifying events for employees (not spouses or children)?

- A. Voluntarily or involuntary termination of employment for reasons other than gross misconduct
- B. Reduction in the number of hours of employment below plan eligibility requirements
- C. Divorce of the employee
- D. **A & B are both qualifying events**

COBRA qualifying events for employees are limited to voluntary or involuntary termination of employment for reasons other than gross misconduct and a reduction in the number of hours of employment below plan eligibility requirements.

Insured employers should especially be aware of the latter when dealing with their insurance carriers. In such a case, employers are normally contractually obligated to inform the insurer of a plan participant's reduction in hours. Similarly, most plans contain "active at work" provisions that require that employees work a minimum number of hours in order to maintain coverage. An employer's failure to inform an insurer that an employee is not meeting a minimum hours requirement could have adverse consequences for the employer and the employee.

16. Which of the following is not a basis for disqualification from receiving unemployment compensation under South Carolina law?

- A. Discharge for misconduct connected with the employment
- B. Voluntary quit without good cause
- C. **Substandard performance due to inability**
- D. Discharge due to a failed drug test pursuant to the employer's clearly communicated policy

Poor performance, failure to meet expectations, lack of motivation, substandard performance, lack of ability . . . call it what you want but termination for these reasons will not disqualify an employee from receiving unemployment compensation under South Carolina law.

17. A South Carolina employer may garnish an employee's wages in which of the following situations?

- A. When money is owed to the South Carolina Department of Revenue
- B. When the employee moves to and works in South Carolina and was subject to a garnishment order in another state before relocating to South Carolina
- C. South Carolina employers can never garnish an employee's wages
- D. **A & B**

South Carolina law recognizes three exceptions to the otherwise total ban on garnishment of an employee's wages: (1) when the employee owes money to a federal or state governmental entity; (2) when the employee is subject to a court order for support, *i.e.*, a qualified domestic relations order (QDRO); and (3) when the employee moves to and works in South Carolina and was subject to a garnishment order in another state before relocating to South Carolina.

Note that 1, 2, or all 3 of these types of garnishments could take place at the same time.

18. In South Carolina, an employer may refuse to hire an applicant who uses tobacco products outside the workplace.
- A. True
B. **False**

In 1990, the South Carolina General Assembly enacted S.C. Code Ann. § 41-1-85, which states as follows: "The use of tobacco products outside the workplace must not be the basis of personnel action, including, but not limited to, employment, termination, demotion, or promotion of an employee."

19. The Fair Labor Standards Act (FLSA) allows an employer to recoup the cost of uniforms and pre-employment drug screening from an employee's pay once the employee begins employment.
- A. **True**
B. False

An employer may recover the cost of uniforms and pre-employment drug testing from employees so long as doing so does not reduce the employee's pay below minimum wage.

Best practice would be for the employer to inform the employee of this practice in writing prior to making the reduction. The employer may charge the "reasonable cost" of the uniform and/or drug testing. An employer may be able to charge a small "administrative fee" as part of the "reasonable cost," but an employer should tread very carefully if it chooses to do so.

20. What years were the Fair Labor Standards Act (FLSA), Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), and the Family and Medical Leave Act (FMLA) enacted?
- A. **1938, 1964, 1967, 1990, 1992**
B. 1918, 1865, 1972, 1990, 1993
C. 1945, 1965, 1975, 1985, 1995
D. 1929, 1965, 1970, 1984, 1992