

Employment: North America 2021



Publisher

Tom Barnes

tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall

claire.bagnall@lbresearch.com

Head of business development

Adam Sargent

adam.sargent@gettingthedealthrough.com

Published by

Law Business Research Ltd

Meridian House, 34-35 Farringdon Street

London, EC4A 4HL, UK

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First published 2020

Second edition

Printed and distributed by

Encompass Print Solutions

Tel: 0844 2480 112



Employment: North America

2021

Lexology Getting The Deal Through is delighted to publish the second edition of *Employment: North America*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Iowa.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise.



London

October 2021

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This article was first published in October 2021

For further information please contact editorial@gettingthedealthrough.com

United States – Michigan

Deborah Brouwer and Angelo Berlasi

Nemeth Law

STATE SNAPSHOT

Key considerations

- 1 | Which issues would you most highlight to someone new to your state?

Michigan falls somewhere in the middle of all U.S. states in terms of employer vs employee-friendly laws. Despite this, employers new to the state should be aware of Michigan's several state-specific laws that govern the employment relationship, several of which are discussed later in this report.

Michigan historically has been a heavily unionized state. Considered the birthplace of the American labor movement, organized labor has dominated the auto manufacturing industry, the state's largest industry. In 2020, the percent of wage and salary workers who were members of unions was 16.6 per cent, as opposed to 10.8 per cent nationally. While union representation has declined somewhat, it also has moved into other areas, such as healthcare and public employment.

Michigan is an at-will employment state. As such, an employer or employee may generally terminate an employment relationship at any time and for any reason, unless a law or agreement provides otherwise.

- 2 | What do you consider unique to those doing business in your state?

Occupational Safety and Health Administration (OSHA)

Michigan is one of 22 states with an OSHA-approved "State Plan," the Michigan Occupational Safety and Health Act. The Act is administered and enforced through the Michigan Occupational Safety and Health Administration (MIOSHA), which works to prevent workplace injuries, illnesses, and fatalities.

The Act covers most private sector workers and all state and local government workers with the exception of:

- contract workers and contractor-operated facilities engaged in United States Postal Service mail operations;
- maritime employment (including shipyard employment, marine terminals, and longshoring, but not including marine construction, which is covered by MIOSHA);
- employers who are enrolled members of Native American tribes and who own or operate businesses located within the boundaries of Native American reservations (non-Native American employers within the reservations and Native American employers outside the territorial boundaries of Indian reservations are covered by MIOSHA); and
- all working conditions of aircraft cabin crew members on-board aircraft in operation.

Public sector employment

In Michigan, public sector employment is regulated by the Public Employment Relations Act (PERA), modelled on the federal National Labor Relations Act (NLRA). PERA provides public sector employees with the right to bargain collectively with their employers over wages, hours, and other terms and conditions of employment. One difference between the PERA and the NLRA is that the PERA prohibits public sector employees from striking.

The PERA is enforced by the Michigan Employment Relations Commission (MERC). MERC resolves labor disputes involving public and private sector employees by appointing mediators, arbitrators and fact finders, conducting union representation elections, determining appropriate bargaining units, and adjudicating unfair labor practice cases.

- 3 | Is there any general advice you would give in the labor/employment area?

Michigan employers should be cognizant of state-specific laws that offer employees greater protections and rights than federal laws, such as the Michigan Paid Medical Leave Act and the Elliott-Larsen Civil Rights Act, which protects employees from discrimination based on height, weight, and marital status, which is relatively rare in this area.

Emerging issues

- 4 | What are the emerging trends in employment law in your state, including the interplay with other areas of law, such as firearms legislation, legalization of marijuana and privacy?

Covid-19 pandemic

As of mid-2021, almost all state restrictions related to the covid-19 pandemic had been lifted.

Eavesdropping statute

Michigan law prohibits the willful use of a device to eavesdrop on a conversation without the prior consent of all parties to the conversation. Despite this, the Michigan Court of Appeals has held that for purposes of recording conversations, a person cannot "eavesdrop" on his or her own conversation, making Michigan a "one party" consent state.

In May 2021, in response to a federal district decision concluding that, based on clear statutory language, Michigan is a two-party consent state, the Michigan Supreme Court declined to address this issue. As such, the Michigan Court of Appeals decision finding Michigan to be a "one-party" consent state remains good law.

Medical and recreational marijuana

Enacted in 2008, the Michigan Medical Marihuana Act (MMMA) permits the use of marijuana to help treat patients with a debilitating medical condition as defined in the law. In 2018, the Michigan Regulation and Taxation of Marihuana Act (MRTMA) was enacted to allow adult-use recreational

consumption of marijuana, making Michigan the first Midwest U.S. state to permit both medical and recreational marijuana use. The Marijuana Regulatory Agency regulates Michigan's adult-use marijuana establishments and licensees in accordance with the MRTMA. Both the MMMA and MRTMA were enacted by voter initiative. Neither of these statutes limits an employer's right to include marijuana as a prohibited substance in a drug policy, and so do not protect an employee from discipline or discharge for testing positive for marijuana (which is still an illegal drug under federal law).

Criminal records

In October 2020, Michigan enacted "clean slate" legislation that will automatically expunge a misdemeanor from a criminal record after seven years, as well as some felonies after 10 years without another conviction. The legislation makes Michigan one of a few states to include some felonies in automatic expungements. This may be relevant to employers that continue to rely on criminal record background checks during the hiring process.

Personal identifying information

As of July 1, 2021, the Michigan Court Rules were amended to protect certain types of personal identifying information (PII), such as birthdates, in court filings. Court clerks will be required to redact PII before providing direct access to the document via the internet. There is concern among employers that such redactions may make it more difficult for background screeners to identify applicants' court records and, in turn, determine if a criminal record belongs to an applicant or employee.

Proposals for reform

5 | Are there any noteworthy proposals for reform in your state?

In Michigan, support for adding protections for LGBTQ+ individuals to the Elliott-Larsen Civil Rights Act (ELCRA) has been increasing. The ELCRA prohibits discrimination on the basis of sex, but unlike the United States Supreme Court's decision in *Bostock v. Clayton Co.*, Michigan law does not currently interpret "on the basis of sex" to include sexual orientation. The Michigan legislature has been called on to amend ELCRA to include such protections for LGBTQ+ individuals, but has yet to do so. In July 2021, the Michigan Supreme Court agreed to hear an appeal by the Michigan Attorney General of a December 2020 decision from the Michigan Court of Claims, holding that ELCRA provides protection against gender identity discrimination, but not against sexual orientation discrimination. The appeal is limited to whether the prohibition on discrimination "because of . . . sex" in ELCRA applies to discrimination based on sexual orientation.

EMPLOYMENT RELATIONSHIP

State-specific laws

6 | What state-specific laws govern the employment relationship?

- Elliott-Larsen Civil Rights Act: prohibits discrimination in employment on the basis of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as well as in housing, education, and access to public accommodations.
- Persons with Disabilities Civil Rights Act: protects the opportunity to obtain employment without discrimination because of disability. A person with a disability must be accommodated unless the accommodation would pose an undue hardship.
- Bullard-Plawecki Employee Right to Know Act: permits employees to review their personnel file as specified under the Act and also imposes limitations on an employer's release to third parties of an employee's disciplinary reports and letters of reprimand.

- Michigan Occupational Safety and Health Act: sets forth health and safety standards to protect workers from workplace hazards.
- Michigan Payment of Wages and Fringe Benefits Act: regulates the time and manner in which employers must pay wages, and prohibits certain pay practices, such as certain involuntary deductions from an employee's pay.
- Michigan Paid Medical Leave Act: requires most Michigan employers to provide a minimum amount of paid leave to their employees and maintain records of leave taken. Under the Act, paid leave extends beyond those reasons for which leave is required under the federal Family and Medical Leave Act.
- Youth Employment Standards Act: regulates the hours and conditions of employment of minors and the issuance and revocation of work permits.
- Michigan Public Employment Relations Act: provides similar rights for public sector employees not covered by the National Labor Relations Act.
- Worker's Disability Compensation Act: provides wage replacement, medical, and rehabilitation benefits to employees who suffer injury or illness arising out of and in the course of employment. The Act is the exclusive remedy for such claims, subject to any intentional tort exceptions.
- Michigan Whistleblowers' Protection Act: protects employees from discharge or discrimination for reporting employer violations of laws.
- Michigan Social Security Number Privacy Act: restricts the use of Social Security numbers.
- Local Government Labor Regulatory Limitation Act: limits the powers of local government bodies to regulate the terms and conditions of employment within local government boundaries for employees of non-public employers.

7 | Who do these cover, including categories of workers?

- Elliott-Larsen Civil Rights Act: applies to all Michigan employers with one or more employee, as well as applicants for employment.
- Persons with Disabilities Civil Rights Act: with certain exceptions, applies to Michigan employers with fewer than 15 employees that are not covered by the federal Americans with Disabilities Act. However, employers, labor organizations, and employment agencies that are subject to both statutes must comply with whichever is the most stringent.
- Bullard-Plawecki Employee Right to Know Act: applies to all Michigan employers (including state and political subdivisions) that have four or more employees and to agents of an employer.
- Michigan Occupational Safety and Health Act: applies to all places of employment in Michigan, except in domestic employment and in mines as defined under the Act.
- Michigan Payment of Wages and Fringe Benefits Act: applies to all Michigan employers that employ at least one person.
- Michigan Paid Medical Leave Act: covers private and public sector employers that employ 50 or more people. The U.S. government, other states, and political subdivisions of other states are excluded from the PMLA's definition of employer.
- Youth Employment Standards Act: applies to all private and public sector Michigan employers, including political subdivisions and agents of the state.
- Michigan Public Employment Relations Act: applies to all public employers and their employees throughout the state of Michigan, except for state classified civil service and federal government employees.
- Worker's Disability Compensation Act: applies to employers with three or more employees at any one time, or that have one or more workers for 35 hours per week for at least 13 weeks.

- Michigan Whistleblowers' Protection Act: applies to all Michigan employers.
- Michigan Social Security Number Privacy Act: applies to all Michigan employers.

Misclassification

8 | Are there state-specific rules regarding employee/contractor misclassification?

Yes. Under the Michigan Employment Security Act and the Worker's Disability Compensation Act, the IRS "20-factor test" is used to determine the existence of an employer–employee relationship.

To determine whether an employment relationship exists under the Michigan Payment of Wages and Fringe Benefits Act, the "economic realities test" is used, which considers: (1) control of a worker's duties; (2) the payment of wages; (3) the right to hire and fire and the right to discipline; and (4) the performance of the duties as an integral part of the employer's business towards the accomplishment of a common goal.

Contracts

9 | Must an employment contract be in writing?

In Michigan, employment contracts generally need not be in writing. However, employment contracts for a term longer than one year must be in writing and signed with an authorized signature by the party to be charged.

10 | Are any terms implied into employment contracts?

In Michigan, absent express disclaimers, the statements in an employee handbook can form a binding contract between an employer and an employee and can establish a "just cause" relationship. An employee handbook is not a binding contract, however, when it explicitly states that it is not a contract.

11 | Are mandatory arbitration agreements enforceable?

Under the Michigan Uniform Arbitration Act, an arbitration agreement is valid and enforceable unless there are grounds for revocation of the agreement under Michigan contract law.

Michigan public policy favors arbitration, and when deciding an application to compel or stay arbitration, courts will place the burden on the party seeking to avoid arbitration rather than the party seeking to arbitrate.

Michigan courts have consistently upheld arbitration agreements in the employment setting, including just-cause contracts requiring arbitration. For arbitration of statutory employment discrimination claims, the following requirements must be met: (1) a valid agreement to arbitrate; (2) a statute that does not prohibit arbitration agreements; (3) no substantive rights and remedies are waived; and (4) the agreement is fair.

Recent Michigan law has seemingly created an exception for claims of sexual assault. The Michigan Court of Appeals found that claims of sexual assault against an employer or supervisor are not subject to mandatory arbitration when an employer or supervisor's alleged sexual assault is not related to employment. As such, an employee's claims may fall outside the scope of a signed mandatory arbitration agreement. This issue is pending before the Michigan Supreme Court.

12 | How can employers make changes to existing employment agreements?

In Michigan, general contract principles, such as the existence of mutuality, apply to the modification of existing employment agreements.

HIRING

Advertising

13 | What are the requirements relating to advertising open positions?

Under Federal law, advertisements indicating a preference for a person of a particular race, color, religion, sex, national origin, or age are unlawful unless one of those factors is an actual qualification for performing the job, or a "bona fide occupational qualification" (BFOQ).

In Michigan, the Elliott-Larsen Civil Rights Act prohibits help-wanted advertisements that are targeted to any specific age group, not just those over 40 years of age. Accordingly, advertisements expressing preferences for "mature" applicants that are not BFOQs are unlawful.

Background checks

14 | (a) Criminal records and arrests

In 2018, the Local Government Labor Regulatory Limitation Act was amended to prohibit local governments from implementing ordinances that regulate the information an employer or potential employer must request, require, or exclude on an application for employment, or during the interview process, from an employee or a potential employee. As such, local governments are prohibited from implementing "ban-the-box" rules limiting when criminal history information about an applicant may be considered or used by non-public employers.

Under the Elliott-Larsen Civil Rights Act (ELCRA), an employer shall not, in connection with an application for employment or with respect to the terms, conditions, or privileges of employment, "request, make, or maintain a record of information regarding a misdemeanor arrest, detention, or disposition of a violation of law where a conviction did not result." This does not apply to "information relative to a felony charge before conviction or dismissal." Thus, under ELCRA, an employer may request records of criminal convictions, pending felony charges and past felony arrests when a conviction did not occur.

15 | (b) Medical history

Under the Persons with Disabilities Civil Rights Act, Michigan employers may not directly or indirectly acquire or have access to any genetic information concerning an employee or applicant for employment, or a member of the employee's or applicant's family.

16 | (c) Drug screening

Michigan has no state-specific statute directly addressing drug screening in relation to employee hiring. Courts have held that an employer has no duty to bargain with a union over drug testing of new applicants because no employment relationship exists until the applicant is hired and because drug testing may be a requirement for employment.

The Michigan Court of Appeals has held that withdrawal of a conditional offer of at-will employment is not unlawful under the immunity provision of the Michigan Medical Marihuana Act (MMMA). The MMMA provides protections for individuals who use medical marijuana under certain circumstances. However, the Act does not prohibit drug testing of a person who is considered a qualifying patient and does not directly address whether an employer may enforce its policies as to an applicant who discloses that they are a qualifying patient.

17 | (d) Credit checks

Michigan does not have a specific law covering credit checks in employment settings. Federal laws, such as the Fair Credit Reporting Act and Title VII, may apply instead.

18 | (e) Immigration status

Michigan has no state-specific statute directly addressing an applicant's immigration status in relation to employee hiring. Employers in Michigan should be aware of federal laws prohibiting discrimination in this respect.

19 | (f) Social media

Michigan's Internet Privacy Protection Act (IPPA) prohibits employers from requesting that an employee or applicant grant access to, allow observation of, or disclose information permitting access to or observation of "personal internet accounts" such as Facebook, Instagram, Twitter, and personal email accounts. Under the IPPA, an employer may not fail to hire an applicant declining such a request.

20 | (g) Other

Under Michigan law, an employer may disclose to an employee or that individual's prospective employer information relating to the individual's job performance that is documented in the individual's personnel file upon the request of the individual or his or her prospective employer. An employer that discloses information in good faith is immune from civil liability for the disclosure. An employer is presumed to be acting in good faith at the time of a disclosure unless a preponderance of the evidence establishes one or more of the following:

- that the employer knew the information disclosed was false or misleading;
- that the employer disclosed the information with a reckless disregard for the truth; or
- that the disclosure was specifically prohibited by a state or federal statute.

Additionally, Michigan public school districts are subject to specific statutory requirements for performing criminal or unprofessional conduct background checks, including mandatory disclosure of unprofessional conduct to subsequent public school employers.

WAGE AND HOUR

Pay

21 | What are the main sources of wage and hour laws in your state?

Michigan employers are governed by the Fair Labor Standards Act. In addition, Michigan has several statutes that regulate the payment of wages and hours, including:

- the Payment of Wages and Fringe Benefits Act;
- the Improved Workforce Opportunity Wage Act; and
- the Youth Employment Standards Act.

22 | What is the minimum hourly wage?

Michigan's current minimum hourly wage is \$9.65. Michigan's minimum wage was established most recently by the Improved Workforce Opportunity Wage Act (IWOWA), effective March 29, 2019. The statute provides stepped annual increases to the minimum wage triggered by the state unemployment rate from the previous year.

For tipped employees, the minimum hourly wage is \$3.67 as of January 1, 2020. The minimum wage for tipped employees is 38 percent of the general minimum wage under the IWOWA.

The IWOWA establishes a training wage of \$4.25 per hour for new employees under 20 years of age for the first 90 days of employment. The minimum wage for employees under 18 years of age who are not being paid a training wage is 85 percent of the general minimum wage.

23 | What are the rules applicable to final pay and deductions from wages?

Michigan Final Pay Law

The Michigan Payment of Wages and Fringe Benefits Act (PWFBA) and Michigan Administrative Code Rule 408.9007 establish a combination of timing rules applicable to wage payments when an employee is discharged or voluntarily resigns.

Under the Administrative Code, an employer must pay all wages due to an employee who voluntarily resigns or is discharged no later than the regularly scheduled payday for the period in which the resignation or discharge occurs.

The PWFBA, however, requires employers to pay all wages earned and due as soon as the amount can, with due diligence, be determined. For employees who hand harvest crops, those who are discharged must be paid all wages due within one working day of the discharge. If such an employee resigns, he or she must be paid no later than three days after the resignation.

For an employee working under contract who voluntarily resigns or is discharged, employers must immediately pay all wages earned by the employee as nearly as can be estimated. Final payment must be made in full at the termination of the contract.

Michigan Wage Deduction Law

Generally, a deduction for the benefit of the employer requires written consent from the employee. Exceptions allowing an employer to deduct from the employee's wage without written consent exist to satisfy wage garnishments. The total amount of deductions may not reduce an employee's gross wages to a rate below the Michigan minimum wage.

Hours and overtime

24 | What are the requirements for meal and rest breaks?

In Michigan, there are no requirements for breaks, meal or rest periods for employees 18 years or older. Employees under 18 may not work more than five hours without a documented 30-minute uninterrupted break. Daily time records must reflect the starting and ending of shifts as well as the 30-minute uninterrupted break.

25 | What are the maximum hour rules?

In Michigan, there are no minimum or maximum hour rules.

26 | How should overtime be calculated?

Overtime is calculated at 1 and a half times an employee's regular rate of pay for hours worked over 40 in a seven-day work week.

27 | What exemptions are there from overtime?

Michigan law exempts anyone employed in a bona fide executive, administrative, or professional capacity from state overtime pay requirements. Michigan follows the federal salary threshold for overtime exemption and any federal duties requirements that are more beneficial than the state requirements.

Record keeping

28 | What payroll and payment records must be maintained?

A Michigan employer must maintain, for at least three years, a record for each employee that indicates:

- the employee’s name, address, birth date, occupational classification;
- the total basic rate of pay;
- the total hours worked in each pay period, unless the employee is employed in a bona fide executive, administrative, or professional capacity;
- the total wages paid each pay period; and
- an itemization of deductions and fringe benefits.

DISCRIMINATION, HARASSMENT AND FAMILY LEAVE

What is the state law in relation to:

PRIVACY IN THE WORKPLACE

Privacy and monitoring

29 | What are employees’ rights with regard to privacy and monitoring?

Employees in Michigan have limited rights with regard to privacy and monitoring in the workplace. Using video recording to monitor employees in the workplace is generally allowed in Michigan. The Michigan Employment Relations Commission has held that public sector unionized employers may be able to use video monitoring in certain instances without first negotiating with the union.

Under Michigan’s Internet Privacy Protection Act (IPPA), an employer has broad ability to monitor, review, or access electronic data stored on electronic communications paid for or provided by the employer.

Employers may also request information and access from employee’s regarding accounts and services provided by the employer, as well as discharge employees for transferring the employer’s proprietary or confidential information to the employee’s personal accounts. It is an affirmative defense to an action under the IPPA that an employer acted to comply with requirements of a federal or state law.

30 | Are there state rules protecting social media passwords in the employment context and/or on employer monitoring of employee social media accounts?

Yes, Michigan’s Internet Privacy Protection Act prohibits employers from requesting that an employee or applicant grant access to, allow observation of, or disclose information that allows access to or observation of “personal internet accounts” such as Facebook, Instagram, Twitter, and personal email accounts. Under the Act, an employer may not discharge, discipline, fail to hire, or otherwise penalize an employee or applicant declining such requests.

Bring your own device

31 | What is the latest position in relation to bring your own device?

Michigan has no state-specific laws relating to employees and “bring your own device.”

Off-duty

32 | To what extent can employers regulate off-duty conduct?

Unlike many other states, Michigan has not passed legislation relating to an employee’s off-duty conduct. However, the Michigan’s Bullard-Plawecki Employee Right to Know Act can apply to information collected on social media sites containing evidence of an employee’s off-duty conduct. That Act states that an employer shall not gather or keep a record of an employee’s associations, political activities, publications, or communications of non-employment activities, except if the information is submitted in writing by or authorized to be kept or gathered, in writing, by the employee to the employer. This prohibition on records does not apply to activities that occur on the employer’s premises or during the employee’s working hours that interfere with the performance of the employee’s duties or duties of other employees.

Gun rights

33 | Are there state rules protecting gun rights in the employment context?

Michigan law does not prohibit an employer from barring an employee from carrying a concealed gun in the course of his or her employment. However, the statute does not define “in the course of his or her employment.”

As such, the regulation of guns inside the workplace is permitted by employers, but it is not clear in Michigan if that extends to premises adjacent to the workplace, including parking lots.

TRADE SECRETS AND RESTRICTIVE COVENANTS

Intellectual Property

34 | Who owns IP rights created by employees during the course of their employment?

In the absence of an agreement to the contrary, an employee is generally the owner of rights to an invention they have created. There are two exceptions to this rule: (1) the intellectual property was explicitly assigned to the employer; or (2) the employee was specifically hired to create the invention. The employer may also be entitled to a non-exclusive license to use the invention.

Restrictive covenants

35 | What types of restrictive covenants are recognized and enforceable?

Michigan law permits restrictive covenants and Michigan courts have imposed few limitations on the rights of employers to implement restrictive covenants. In Michigan, restrictive covenants include:

- Non-competition agreements;
- non-solicitation agreements; and
- non-disclosure agreements.

The Michigan Antitrust Reform Act explicitly permits noncompetition agreements between employers and employees that protect an employer’s reasonable competitive business interests and expressly prohibits an employee from engaging in employment or line of business after termination of employment. Whether a noncompetition agreement is reasonable, and therefore enforceable under Michigan law, depends on its duration, geographical area, and the type of employment or line of business. Michigan law enables courts to limit a non-competition agreement to render it reasonable in light of the circumstances in which it was made and ultimately enforce the agreement as limited. Accordingly, courts have considerable freedom to

modify all aspects of a noncompetition agreement in order to render it reasonable.

Non-solicitation agreements are usually afforded deference by Michigan courts. A non-solicitation agreement prohibits an employee from attempting to persuade coworkers to leave the employer or trying to convince the employer's customers to do business elsewhere. Michigan courts have provided relief for violations of non-solicitation agreements including preliminary injunctions and temporary restraining orders.

Under Michigan law, preventing the anticompetitive use of confidential information is a legitimate business interest. As such, nondisclosure agreements are enforceable as well.

Non-compete

36 | Are there any special rules on non-competes for particular classes of employee?

There are no specific rules for particular classes of employees. The Michigan Court of Appeals has upheld noncompetition agreements for attorneys and physicians, although the Supreme Court has not weighed in on the issue. Agreements have been upheld against a registered nurse who provided home healthcare services where the court considered the nature of the home healthcare industry and the fact that home healthcare nurses "are necessarily in the position to develop personal relationships with ... patients" and "can easily solicit [their employer's] patients for a competing entity while still employed."

The Michigan Supreme Court has not definitively decided whether non-compete agreements are enforceable in the legal profession. Michigan Rule of Professional Conduct 5.6 reflects the traditional stance and states:

A lawyer shall not participate in an offering or making of: (a) a partnership or employment agreement that restricts the right of a lawyer to practice after termination of the relationship ... or (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

LABOR RELATIONS

Right to work

37 | Is the state a "right to work" state?

Yes, Michigan is a "right to work" state.

In 2013, in response to a voter initiative, Michigan's Freedom to Work laws amended two labor statutes: the Labor Mediation Act, governing the private sector; and the Public Employment Relations Act, which applies to the public sector.

Generally, the Freedom to Work laws prohibit union-security agreements, which required that private and public employees pay union dues or service fees as a condition of obtaining or continuing employment. Employees who choose to opt out of a union are still afforded rights and benefits as members of the bargaining unit. Additionally, the Freedom to Work laws do not prohibit employees from joining or financially assisting a labor organization or participating in collective bargaining with an employer.

Unions and layoffs

38 | Is the state (or a particular area) known to be heavily unionized?

Yes, Michigan historically has been heavily unionized. At its peak in 1989, union members accounted for 26.0 percent of wage and salary workers in Michigan. In 2009, that number was 19.9 percent. In 2019, Michigan union membership reached a historic low of 13.6, likely as a result of

the Freedom to Work laws enacted. However, union membership grew in 2020, reaching a total of 15.2 percent of the workforce.

39 | What rules apply to layoffs? Are there particular rules for plant closures/mass layoffs?

There are no state-specific laws regarding rules for plant closures or mass layoffs. The federal Worker Adjustment and Retraining Notification Act offers protection to Michigan workers, their families, and communities by requiring employers to provide at least 60 days' notice in advance of covered business closings and mass layoffs.

Such notice must be provided to either each individual worker who will be affected or to the labor representative where applicable. Written notice must also be provided to the state of Michigan Workforce Transition Unit and to the local elected government official in which the closing or mass layoff occurs.

DISCIPLINE AND TERMINATION

State procedures

40 | Are there state-specific laws on the procedures employers must follow with regard to discipline and grievance procedures?

Other than those that may indirectly apply dealing with discrimination, under the Michigan Public Employers Relations Act, public employers shall not discharge or cause any public employee to be discharged or separated from his or her employment because of participation in the submission of a grievance under the act.

Michigan has no state-specific laws that employers must follow regarding discipline and grievance procedures for private employers.

At-will or notice

41 | At-will status and/or notice period?

Michigan is an at-will employment state. As such, an employer or employee may generally terminate an employment relationship at any time and for any reason, unless a law or agreement provides otherwise.

42 | What restrictions apply to the above?

One limited exception to at-will employment precludes the discharge of an employee in violation of a clearly recognized public policy. Michigan law also provides a limited exception to at-will employment where there is evidence of a legitimate expectation of just-cause employment. A just-cause employment relationship may be found when an employer makes a clear and unequivocal oral promise for a just cause employment relationship.

Final paychecks

43 | Are there state-specific rules on when final paychecks are due after termination?

Under Michigan law, when an employer discharges or lays off an employee, the employer must pay the employee all wages due by the regularly scheduled payday for the period in which the termination occurs, except for employees engaged in hand harvesting, who must be paid within one working day.

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