

WHAT YOU NEED TO KNOW: ARKANSAS LABOR LAW

February 26, 2018

IT'S TIME TO REVIEW YOUR CONTRACTS

- Arkansas Supreme Court held that a jury trial cannot be waived before litigation begins.
- Jury waiver clauses are unenforceable under the Arkansas Constitution and should not be included in contracts.
- Arbitration clauses may be considered as an alternative if avoiding the time and expense of a jury trial is a priority.

GUNS IN TRUNKS: Concealed carry licensees may possess a concealed handgun in his/her employer's parking lot under specific terms and in accordance with safety procedures. Ark. Code Ann. § 5-73-326. Employers are protected from liability and have the right to impose restrictions.

The employer may prohibit a licensee from entering the employer's place of business or parking lot in the following circumstances:

- The parking lot is (i) a prohibited place per § 5-73-306 or (ii) on the grounds of an occupied single-family detached residence;
- The employer reasonably believes that the employee is in illegal possession of the handgun;
- The employee is operating an employer-owned vehicle during employee's duties (except when required as part of the employee's duties);
- The employee is the subject of an active or pending employment disciplinary proceeding; or
- The employee has been adjudicated mentally incompetent by reason of mental disease.

Arkansas Legislative Response to *Gerber Products Company v. Hewitt*:

Pursuant to Arkansas Act 914 of the 2017 Regular Session, where the following activities are excluded from compensation by a collective bargaining agreement applicable to the relevant employee, an employer is not subject to liability for failure to pay minimum wage or overtime:

- (1) Walking, riding, or traveling to and from the actual place of performance of the principal activity or activities that the employee is employed to perform; and
- (2) An activity that is preliminary to or postliminary to the principal activity or activities, that occurs either before the time on any particular workday when the employee commences or subsequent to the time on any particular workday when he or she ceases the principal activity or activities.

BACKGROUND CHECKS: Employers shall provide copies of background checks to employees and applicants for employment upon request by employee.

MEDICAL MARIJUANA

Employers shall not discriminate against an individual in hiring, termination, or any other term or condition of employment based upon the individual's past or present status as a qualifying patient or caregiver.

Employers are not prohibited from:

- (1) establishing a substance abuse or drug-free workplace policy that may include a drug testing program that complies with state or federal law;
- (2) taking action with respect to an applicant or employee under the policy acting on the good faith belief that a qualifying patient possessed, smoked, ingested, or otherwise engaged in the use of marijuana while on the premises of the employer or during the hours of employment, or was under the influence of marijuana while on the premises of the employer or during the hours of employment, provided that a positive test result for marijuana cannot provide the sole basis for the employer's good faith belief; or
- (3) acting to exclude a qualifying patient from being employed in or performing a safety sensitive position based on the employer's good faith belief that the qualifying patient was engaged in the current use of marijuana.

Employers are not required to:

- (1) accommodate the ingestion of marijuana in the workplace or an employee working while under the influence;
- (2) allow a guest, client, customer, or other visitor to use marijuana on the property;
- (3) admit a guest, client, customer, or other visitor who is inebriated as a result of the use of medical marijuana, but the employer may be required to accommodate the underlying condition.

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