



Employee Separation:

Legal Updates & Compliance Best Practices

March 20, 2025

Agenda

1 At-Will and
Release of Claims

2 WARN Act and
Other Notices

3 Legal Updates
and Trends

“At-will” employment

Neither side is obligated to continue an employment relationship

- Employers can fire employees, and they can quit, at any time and for almost any reason
- No probationary period, cause requirements, etc.

Most US employees are “at-will”

- Notable exceptions include Montanans, union members, and some contract employees

Still some limitations on firing employees

- Can’t do it for discriminatory reasons or reasons that governments have decided aren’t in the public interest



When *can't* you fire an employee?

1. For discriminatory reasons

- E.g., because of their race, religion, sex, etc.

2. In retaliation for reporting unlawful conduct

- E.g., filing a claim of discrimination, reporting safety or wage and hour violations, etc.

3. For exercising legal rights

- E.g., taking leave employers are legally required to offer, participating in government investigations, unionizing, etc.

4. For reasons that undermine public policy

- E.g., refusing to follow illegal orders, warning the public about safety risks, etc.

Documentation is key

Documenting your reason for firing an at-will employee can be the difference in a lawsuit

- Both before and after the decision is made
- Get input from the employee if possible
- Consistency is king

Getting a release of claims from potentially litigious employees is a good practice too

- Separation acknowledgements can work for others



Agreements v. acknowledgements

Different separation documents serve different purposes

- **Acknowledgements:** Document the circumstances of the separation, provide any required notices, and remind employee of existing obligations (if any)
- **Agreements:** Allow employer to obtain a release of claims and other promises in exchange for a severance payment

Agreements generally provide the company with more protection at a cost

- Consider the circumstances of each separation when deciding which type of document to use
- Can't force departing employees to agree



Releasing claims

Broad waivers are included in most separation agreements

- “Knowing and voluntary” waivers are effective to release almost all claims

But they sometimes require “magic words” to be effective

- E.g., many states require them to list the specific claims an employee is waiving by name

Saying the “magic words”

California

Can't waive “unknown” claims w/o specific language

- Ca. Civ. Code § 1542

Some lawyers include the full language of the statute to ensure waiver is valid

- But referencing it is likely fine too

Federal

Age Discrimination in Employment Act (ADEA) requires specific language when terminating EEs >40

- Even more required language for RIFs
- Must give EE 21 (or 45) days to sign

West Virginia

To be valid, release must:

- Mention WV Human Rights Act;
- Advise the EE to consult an attorney;
- Include the phone number for the WV state bar; and
- Give the EE 7 days to revoke after signing

Release agreement **compliance checklist**

1. Determine whether the employee is **over 40**
2. Specifically **list the claims** that you want the employee to waive
3. **Include any “magic words”** that state or federal law requires
4. Limit the release to **exclude claims that can't be waived**
5. Give the employee **something of value in exchange**
6. Include the **reason for separation** (if appropriate)



WARN Acts: Separation on a large scale

Requires large employers to send a variety of notices before they (1) close a facility or (2) layoff 50 or more workers at once

- Only required for facility closings that result in job loss for 50+ EEs

The federal “Worker Adjustment and Retraining Notification” Act applies nationwide to employers with 100 or more EEs

- Some states have their own versions with lower thresholds



WARN Acts: Continued

Federal

Must send notices to employees, state UI offices*, and the local “chief elected official”

Notice content varies by recipient, but generally includes:

- When and where the plant closing or layoff will happen;
- Who it will affect;
- Company contact information; and
- Contact information for any unions representing affected employees.

Delaware

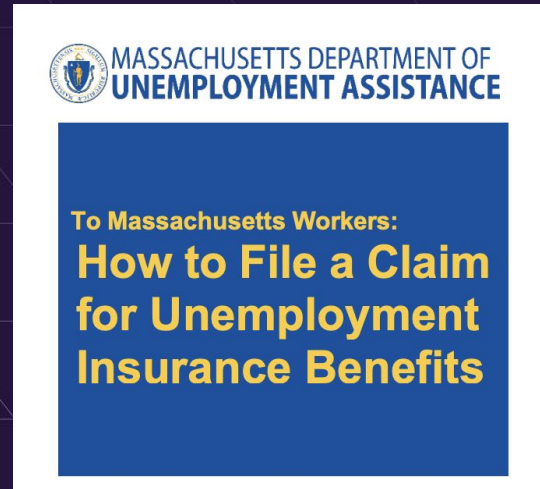
Same required recipients, plus a few more units of DE’s government

All federally required info must be included, plus:

- Details of severance payments offered to employees;
- Whether the employer is self-insured for DE workers’ compensation; and
- Specific language about available UI and retraining in DE

Separation notices: Notice of unemployment insurance or benefits

- This is the most common type of separation notice
- States often provide a specific form that meets this notice requirement
- States that require employers to provide unemployment insurance or benefits information at separation include:
 - Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Virginia, and Wyoming.



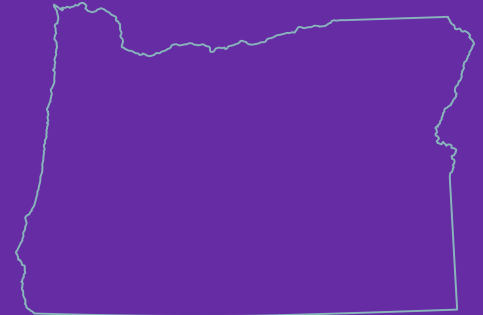
Separation notices: Mini-COBRA

- COBRA is a federal law (the “Consolidated Omnibus Budget Reconciliation Act”) that gives workers who lose their jobs the right to choose to continue their group health plans.
 - It generally applies to employees who worked for an employer that had 20 or more employees in the prior year.
- Many states have laws that extend COBRA-type benefits to employees who work for smaller employers. These are sometimes called “mini-COBRA” laws.
- Some of these states require employers to provide employees with information about the state’s mini-COBRA laws at separation. Those states include:
 - Arizona, California, Delaware, DC, Illinois, Iowa, Kansas, Maryland Minnesota, Nebraska, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Utah, Vermont, Virginia, and Wisconsin.

Non-competes

Separation Notice

- Oregon law requires employers that have non-compete agreements with departing employees to provide a signed, written copy of the terms of the agreement to the employee within 30 days of separation.



Enforcing Non-Competition and Non-Solicitation Agreements

- Even if you're not in Oregon, it may be a good idea to remind separating employees of their non-competition and non-solicitation obligations.
- Some employers ask employees who are leaving for another job to provide the name of the employee's next employer and the position they are taking as part of their severance acknowledgement.

Final paycheck laws

Can vary significantly from state to state

- 46 states and DC have final paycheck rules.
- Alabama, Florida, Georgia, and Mississippi don't regulate when final paychecks must be paid.

Can vary depending on the reason for the separation

- In several states, employees who are let go must be paid in full on the day of their separation.
- In many of those same states, employees who resign can be paid on the next scheduled payday.

Failing to comply can subject employers to significant penalties

- In Alaska, Employers who fail to pay wages may be required to pay both the unpaid amount plus an additional 90 days' wages at the employee's regular pay rate.
- In Connecticut, employers who fail to pay wages may be required to pay the unpaid amount and criminal penalties up to \$5,000 in fines, imprisonment up to 5 years, or both for each offense.

Poll question:

Does your organization conduct exit interviews?

Exit interviews

- Exit interviews can be opportunities to get candid feedback from departing employees
- They are often held only with employees who are retiring or leaving for another job
- They should be completely voluntary and conducted carefully and consistently
- They are often handled by HR rather than the employee's supervisor
- They can help organizations understand why people leave
- They can also help organizations identify problems and recognize areas for improvement

Balance of powers

The United States Constitution* creates a system of check and balances by assigning specific powers to different parts of the government.

Legislature

Article I of the Constitution

Makes laws, controls federal spending, and approves treaties.

Can override vetoes, impeach officials, and approve judicial appointments.

Executive

Article II of the Constitution

Enforces laws, commands the military, and conducts foreign policy.

Can veto laws, appoint judges, and issue executive orders.

Judiciary

Article III of the Constitution

Reviews laws and government actions to determine constitutionality.

Can declare laws or executive actions unconstitutional.

*Judicial review comes from *Marbury v. Madison* (1803)

Executive actions

- 93 Executive Orders signed since January 20, 2025
 - Advance administration's goals and cover topics including immigration, energy and environmental regulations, healthcare reforms, foreign policy adjustments, and restructuring federal agencies.
- The Justice Department and other agencies have dropped existing lawsuits and complaints that don't align with the administration's goals and are bringing new ones that do align
 - Dropped Environmental Justice, Disparate Impact, Non-compete Ban Appeal, and other topics seen as promoting Diversity, Equity, and Inclusion
- Cutting federal funding and grants (Department of Government Efficiency)

Higher education under intense scrutiny

- Over 50 universities are under investigation as part of Trump's anti-DEI crackdown ([NPR](#))
- Trump threatens funding cut to colleges allowing 'illegal protests' ([Reuters](#))
- Trump administration suspends \$175 million in federal funding for Penn over transgender swimmer ([AP News](#))
- Government Announces Initial Cancellation of Grants and Contracts to Columbia University Worth \$400 Million ([ed.gov](#))
- Universities across the U.S. freeze hiring as federal funding hangs in the balance ([NPR](#))



Executive action challenges

- Currently 127 cases are in progress against 22 Executive Orders and other executive actions
- At least a dozen Injunctions or Restraining Orders
- Appeals are already making their way to the circuit courts of appeal
- Expect to wait until these issues make it up to the US Supreme Court for final answers
- Executive Response:
 - Appeal
 - Delay
 - Work Around Limits
 - Ignore?

*[*List, description, and latest updates on current executive challenges from Just Security](#)*

Federal judiciary

94 District Courts

Federal Trial Court System
Hears cases about federal law or
between different state residents

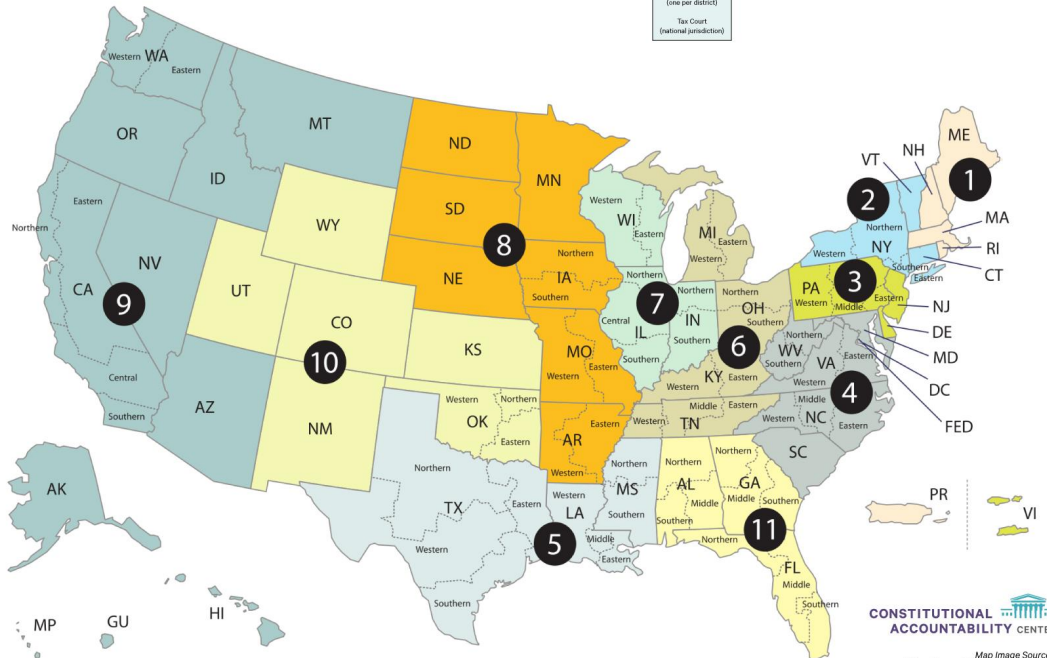
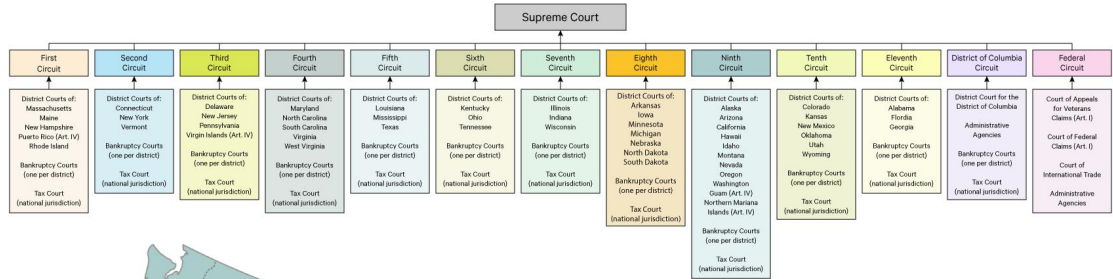
13 Circuit Courts of Appeals

District Court decisions are
appealed to the circuit over that
district

The Supreme Court

Chooses to hear certain cases
including ones appealed from circuit
courts or under original jurisdiction.
They have the final say on what laws
mean and what is constitutional.

United States Federal Court System



CONSTITUTIONAL
ACCOUNTABILITY CENTER

Map Image Source:
United States Department of Justice

Mayhem in Michigan

Dec
2018



July
2024



Feb
2025



Oct 1,
2025

Voters pass ballot initiatives related to minimum wage and paid sick leave.

The state legislature adopts the initiatives as law and then quickly [amends the laws](#) to be less burdensome on employers.

This quick and substantial change to voter initiatives is challenged in state court.

The Michigan Supreme Court rules in [Mothering Justice v. Attorney General](#) that the legislature violated the state constitution by amending the voter initiative during the same legislative session it was passed in.

The original voter initiatives are set to take effect February 21, 2025.

The court notes that it is now a new legislative session*

February 20th the legislature passes and the Governor signs into law [House Bill No. 4002](#) which significantly amends the voter initiative sick leave to be less burdensome on employers.

Employers with 10 or fewer employees in the U.S. don't have to comply until October 1, 2025.

The state also passes [Senate Bill 008](#) which amends the minimum wage rollout schedule.

Small businesses must begin complying with paid sick leave requirements.

Small businesses have a lower cap that they can place on annual sick leave use and carryover (40 hours).

The updated law provides a three year grace period for new small businesses.

New Michigan sick leave rules

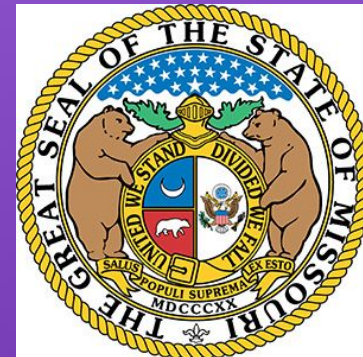
	Amount	Carryover
11+ Employees	Employees must be allowed to use up to 72 hours of leave per year	Up to 72 hours of leave Carryover isn't required if you frontload leave
1-10 Employees	Employees must be allowed to use up to 40 hours of leave per year	Up to 40 hours of leave Carryover isn't required if you frontload leave

Other changes

- **New hire waiting period:** Employees hired after February 21, 2025, must wait 120 days to use accrued sick leave; those hired before can use it immediately.
- **Rehire leave:** If rehired within 2 months, employees regain previously accrued, unused sick leave. (instead of 6 months)
- **Documentation deadline:** If an employer requests documentation employees has 15 days to provide that. Employers can still only request documentation if an employee takes leave for more than 3 days in a row.
- **Notice deadline extension:** Employers have an extra 30 days (until March 23, 2025) to provide the required sick leave notice to employees.

Missouri sick leave and minimum wage

- Voters Passed Proposition A in November 2024 with 57% voting yes
 - Prop A provides employees with up to 40/56 hours of sick leave per year beginning May 1, 2025
- Missouri House passes law that removes sick leave and future minimum wage increases. [HB 567](#)
 - Still waiting for the bill to be passed by the state senate and signed by the governor. (Read in Senate March 18)
 - Wouldn't repeal sick leave until August 28, 2025
- State Supreme Court just heard oral arguments for a challenge against Prop A claiming it violates the state constitution



SixFifty: Research and Legal Updates

Keyword Search

Category

Employment Laws

Legal Updates

Jurisdiction

Alaska

Arizona

Arkansas

California

Colorado

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Topic

Artificial Intelligence

Business and Employment Registration

Drug and Alcohol Testing

Employee Conduct

Employee Verification

See All

Subtopic

Age Recruitment

Age Discrimination

Equal Employment Opportunity

Research Beta

Ask SixFifty AI Instead

Employment

Jurisdiction	Topic	Subtopic	Notice Date	Effective Date
New York	Work Scheduling and Conditions	Workplace Safety	2/28/25	6/2/25
On September 4, 2024, Governor Hochul signed the Retail Worker Safety Act into law, requiring employers with at least 10 retail employees to develop a workplace violence prevention policy and workplace violence prevention training. Employers...				
Ohio	Wage and Hour	Pay Stubs	2/28/25	4/9/25
Ohio recently passed HB 106, which adds new pay stub requirements to Ohio Revised Code Section 4113.14. Beginning April 9, 2025, employers must include all the following information on employee paystubs, which must be provided every pay pe...				
Ohio	Employment Agreements	Non-Competition	2/28/25	2/5/25
On February 5, 2025, Ohio legislators introduced a bill (SB 11) to ban post-employment non-competes in the state. This bill would void any non-compete executed or amended after the effective date. There has been no additional action taken regard...				
Michigan	Leave	Sick Leave	2/28/25	2/21/25
The Michigan legislature came to an eleventh-hour compromise on minimum wage and sick leave updates that were scheduled to take effect February 21, 2025. Review our recent special update about Michigan minimum wage and sick leave laws for...				
Florida	Employee Verification	Immigration	2/28/25	2/17/25
On February 17, 2025, Florida legislators introduced a bill (SB 782) to require all employers in the state to verify new hire immigration status and employment eligibility using the federal E-Verify system, not just those with 25 or more employees as is...				
Federal	Equal Employment Opportunity	Protected Characteristics	2/28/25	2/14/25
On February 14, 2025, acting Assistant Secretary for Civil Rights in the Department of Education, Craig Trainor, published a "Dear Colleague" letter claiming that "[e]ducational institutions have toxically indoctrinated students with the false premise...				
Federal	Equal Employment Opportunity	Protected Characteristics	2/28/25	2/21/25
In response to Executive Order (EO) 14173 titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," which targets DEI practices and labels them illegal, the National Association of Diversity Officers in Higher Education and othe...				
Missouri, Kansas City	Recruitment	Criminal History	2/28/25	1/16/25
Kansas City, Missouri recently passed an ordinance that adds criminal histories to the list of protected characteristics, making it illegal to discriminate against people with criminal histories. The ordinance specifically prohibits the city from discrimina...				
Michigan	Wage and Hour	Minimum Wage	2/28/25	2/21/25
Michigan minimum wage law has been in flux in recent months. Review our special update about Michigan minimum wage and sick leave laws for the latest information.				



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of the platform

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Not ready for a 1:1 tour
of the platform?

Join our live group
demo next week—and
get a look at brand-new
SixFifty features, too!

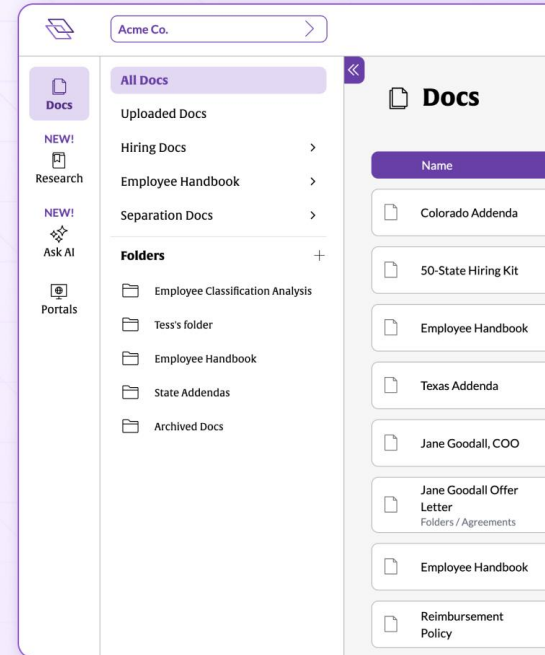


MARCH 26 @ 10 AM PT / 1 PM ET

Live SixFifty product demo



with Ryan Parker,
Chief Legal Officer at SixFifty





Learn more at sixfifty.com