

Eight Great Dealer FAQs About Employment Law

By Britenae Pierce

1. Do employees have the right to see their personnel files?

Yes. Washington law states that if an employee requests to inspect his or her personnel file, the employer must make the personnel file available for review at least once per year. The employer should make the file available within a reasonable period, which generally is 10 days. The employer can, however, determine if there is any irrelevant or erroneous information in the personnel file and remove it. Also, the employee does not have the right to inspect records relating to the investigation of a possible criminal offense or records compiled in preparation for an impending lawsuit which otherwise would not be discoverable in that lawsuit (such as communications with counsel about that employee).

2. Can a company terminate an employee for making disparaging comments about the company in social media?

If the company learns that an employee is disparaging the company on a social network, on a blog, on Twitter, or through other social media then the company should investigate and consider appropriate disciplinary action. That disciplinary action can include termination. The disparaging comments may show poor judgment and a lack of loyalty, which can justify termination. However, if the comments concern conditions of employment they may be protected as “concerted activity,” in which case you cannot take adverse action against the employee.

3. When terminating at-will employees, does the employer need to state a reason for the termination?

An employer is not automatically obligated to provide a reason for termination, unless an employment agreement is in place stating otherwise. But Washington employees have the right to request the reason for their termination, and then the employer is obligated to provide a reason in writing within 10 days of the request. Also, from a practical perspective, an employer may want to provide the reason for termination to avoid confusion and to discourage the employee from filing a lawsuit.

4. For executive, administrative, and professional exempt employees, how can an employer deduct paid time off from the employee’s salary without losing the exemption?*

As a general rule, all exempt employees must be paid their full salary for any week in which the employee performs any work, without regard to the number of days or hours worked. But certain exceptions exist. Exempt employees need not be paid for any workweek in which they perform no work. Also, vacation absences may be deducted from the exempt employee’s salary in increments of one or more full days (no partial days). Sick leave absences may be deducted in full day increments if deductions are made in accordance with a bona fide plan, policy, or practice, such as a short-term disability insurance plan.



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Ryan, Swanson & Cleveland, PLLC
1201 Third Avenue, Suite 3400
Seattle, WA 98101-3034

www.ryanswansonlaw.com

5. For executive, administrative, and professional exempt employees, how can an employer deduct time off from a PTO or leave bank?*

Some employers use a leave bank, or a paid time off (PTO) bank, even for executive, administrative, and professional exempt employees. Generally, where an employer has a leave plan where employees accrue leave in a bank, the employer may reduce the amount of leave in the bank for partial day absences, as long as the employee receives payment of his or her full salary. The leave bank deductions must be a minimum of one hour, but then in any increment beyond one hour. A partial day deduction may be made only on the express or implied request of the employee for time off from work. In Washington, the employer's leave bank plan must be in writing in a contract or agreement, or in a written policy distributed to employees.

6. Does an employer need to pay unused sick leave or vacation time to an employee who quits or has been terminated?*

Unless the company has a specific policy requiring such payment, the employer does not need to pay out the unused sick leave or vacation time. This is because vacation time and paid sick leave are voluntary benefits provided by the employer, not required by Washington State law. You should follow your normal practice to avoid complaints of discrimination.

7. Are noncompetition agreements enforceable?

Generally yes, if the noncompetition agreement is reasonable. To be considered reasonable, noncompetition agreements must be: 1) necessary to protect the employer's legitimate business interest or goodwill; 2) not greater than reasonably necessary to secure the employer's business interest or goodwill; and 3) not cause injury to the public by the loss of the service and skill of the employee. Noncompetition agreements must be supported by independent consideration. This means an employee must be given some contemporaneous benefit in exchange for giving up the opportunity to compete with the employer. If an employee signs a non-compete prior to starting work, the employment itself is the consideration. If an employee signs a non-compete sometime after starting work, then the non-compete should be supported by independent consideration, such as a bonus, special training, a raise, or a promotion.

8. Can a company require its employees to sign up for direct deposit?

Yes, as long as there is no cost to the employees.

*This article does not cover the FMLA or its various exceptions to exempt employees' entitlement to their salary.

Britenae M. Pierce is an attorney in Ryan, Swanson & Cleveland, PLLC's Employment Rights, Benefits and Labor Group. She can be reached at 206.654.2289 or pierce@ryanlaw.com.