An Outline of MISSISSIPPI EMPLOYMENT LAW
An Outline of Mississippi Employment Law

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INTRODUCTION

Unlike many states, Mississippi does not have comprehensive legislation similar to the federal anti-discrimination laws governing the employment relationship between a private employer and employee. Absent a written employment contract to the contrary, the employment relationship in Mississippi is terminable at-will with only a few exceptions recently enunciated by the Mississippi Supreme Court. There are, however, several statutes in the Mississippi Code impacting the employment relationship that employers should note and be mindful of while doing business in Mississippi.

For purposes of this booklet, the discussion of these employment related laws in Mississippi is categorized as

(1) common law issues, and
(2) statutory obligations and prohibitions.

While this booklet does not attempt to address all of the considerations that employers may confront and/or need to be attentive to under Mississippi law, it should assist managers in recognizing potential problems and evaluating the possible ramifications of employment decisions in the typical employment environment in Mississippi.
COMMON LAW ISSUES

At-Will Doctrine
Since 1858, Mississippi has followed the old common law principle of “at-will” employment. Absent a written employment contract with a definite term of employment, the employer and employee are free to terminate the employment relationship with or without notice for “a good reason, a wrong reason or no reason at all” as long as one or more of the federal anti-discrimination laws or applicable state statutes is not implicated.

The harshness of the at-will doctrine was criticized by the courts for many years which eventually led to the doctrine being softened by the Mississippi Supreme Court in 1992 and 1993. Under the current state of the law, an at-will employee may void the strict application of the at-will doctrine and maintain an action for wrongful termination against the employer under a “quasi-contract” theory and/or a “public policy” exception to the doctrine.

Quasi-Contract Theory
A wrongful discharge claim may be maintained by an at-will employee if the employer has distributed an employee handbook setting forth specific policies and procedures for discipline and termination (a progressive discipline policy) and failed to follow the handbook’s express procedures. In 1992, the Mississippi Supreme Court determined that the employer should be “held to its word” absent an acceptable disclaimer or specific language to the contrary in the handbook.

Where, however, the employer’s handbook expressly states that the handbook is not a contract and the employer reserves the right to terminate the employee with or without reason or notice, then the at-will relationship is sufficiently preserved and the “quasi-contract” theory is not applicable.

Public Policy Exception
In 1993, the Mississippi Supreme Court recognized a “public policy” exception to the at-will doctrine. Under the public policy exception, an at-will employee may maintain an action for wrongful discharge against the employer if the employee is
terminated for (a) refusing to commit or participate in an illegal act, or (b) for having reported an illegal act. The Mississippi Supreme Court recently confirmed this exception in 2008, holding that an employee may maintain a state law action for retaliatory discharge alleging that s/he was fired for reporting illegal acts by a co-worker relating to the employer’s business. The Court further found that Mississippi law does not require liability by individual defendants who participate in such a retaliatory firing.

This exception to the at-will doctrine is sometimes referred to as Mississippi’s judicially created “whistleblower” exception when the employee’s action is based on the assertion that he or she was discharged for reporting an illegal act.

The significance of this exception is seen in the courts’ subsequent categorization of the legal nature of the claim. A wrongful discharge claim under this exception is deemed to be founded on a tort theory with tort remedies available. This means that, in addition to the usual contractual damages such as lost wages, a successful litigant may obtain an award for emotional distress and punitive damages.
STATUTORY OBLIGATIONS AND PROHIBITIONS

Report of New Hires

Employers doing business in Mississippi are required to report to the Director of New Hires within the Mississippi Department of Human Services

1. the hiring of any person who resides or works in the state and to whom the employer anticipates paying wages; and

2. the hiring or return to work of any employee who previously was laid off, furloughed, separated, granted leave without pay or was terminated from employment.

The report must be submitted within 15 days of the hiring, rehiring or return to work. The report must contain the employee’s name, address, social security number and date of birth, the employer’s name, address and federal and state withholding tax identification numbers, and the date upon which the employee began or resumed employment.

Standardized forms are available through the Mississippi Department of Human Services for compliance with the reporting requirements.

A civil penalty of up to $25 may be administratively levied for failure by the employer to submit the requisite report. If failure to submit the report or if submission of a report with false or incomplete information is the result of a conspiracy between the employer and employee to withhold complete or accurate information from the Mississippi Department of Human Services, a civil penalty of up to $500 shall be imposed.

Right to Work
Miss. Code Ann. §71-1-47

Mississippi is a “right to work” state in which all persons are protected in the exercise of their right to freely form, join or assist labor organizations or to refrain from such activity. An employee who has been denied employment or continuation of
employment in violation of this statute is allowed to recover any actual damages sustained as a result of the violation.

The statute does not apply to any employer or employee under the jurisdiction of the Federal Railway Labor Act.

**Prohibited From Labor Management Functions**  
**Miss. Code Ann. §71-1-49**

Any person that is a non-US citizen, former member of the Communist Party, or felon convicted of certain crimes is prohibited from serving in a management capacity for a labor union in Mississippi. Such persons are also prohibited from serving as a labor relations consultant of an employer or as an officer, director, agent or management employee of a group or association of employers dealing with a labor organization for a period of five years following the person’s termination of his membership in the Communist Party, five years after his conviction or five years following end of imprisonment. An employer may not knowingly permit any such person to assume or hold any office or paid position in violation of this statute.

A willful violation of this statutory prohibition will result in a fine of not more than $1,000, imprisonment for not more than one year, or both.

**Armed Forces and Military Leave**  
**Miss. Code Ann. §33-1-15 and §33-1-19**

An employer is prohibited from depriving, interfering with, or otherwise discriminating against a member or former member of the armed forces, reserves or national guard with respect to the terms and conditions of employment based on his or her military service. An employer or any individual determined to have violated this statute shall be guilty of a misdemeanor and subject to a fine of $1,000 and imprisonment for not more than six months.

An employee who is a member of a reserve or active component of the armed forces (including Mississippi National Guard) and leaves a position, other than a temporary position, for duty or training is entitled to be restored to the same or similar employment position, in the same status, pay and seniority upon satisfactory proof of
completion of service. The period of absence for military duty or training must be
deemed as an absence with leave but may be without pay.

Jury Duty
Miss. Code Ann. §13-5-23

An employer is prohibited from persuading or attempting to persuade an employee to
avoid jury duty or otherwise intimidating or threatening an employee in this regard.
A violation of this statute is deemed to be an interference with the administration of
justice and contempt of court and is punishable under the law as such.

Workers’ Compensation Act
Miss. Code Ann. §§71-3-1 et seq.

Subject to certain exceptions and exclusions, any employer with five or more
employees is subject to the Mississippi Workers’ Compensation Act. An employee
injured on the job is entitled to weekly indemnity benefits based on his or her average
weekly wage and all reasonable and necessary medical services compelled by the
injury are to be absorbed by the employer. The maximum amount of weekly
indemnity benefits to be paid is set annually by the Mississippi Workers’
Compensation Commission, and the maximum number of weeks the indemnity
benefit must be paid is capped at 450 weeks. The costs and/or expenses for
reasonable and necessary medical services is subject to the Mississippi Fee Schedule,
but is otherwise unlimited in duration or amount. Defenses to a workers’
compensation claim include:

1. intoxication of employee was the proximate cause of injury;
2. injury resulted from the willful intention of employee to injure himself or
   another;
3. failure of employee to give timely notice of injury resulting in prejudice
to employer;
4. injury or continuing disability was result of an independent, intervening
   cause unrelated to employment;
5. injury or continuing disability was result of pre-existing condition or
disease; or
6. claim is barred by the statute of limitations.

Mississippi recognizes two limitations periods in relation to the timeliness of a claim for workers’ compensation benefits. The first is a two year period and applies when no indemnity benefits have been paid for the injury. The two year period begins to run from the date the employee has notice or reasonably should have known of an occupational injury.

The second limitations period provides for a one year period and applies once indemnity benefits have been paid under a claim. To commence the one year limitations period, the employer must file a Commission Form B-31 signifying the last payment of indemnity. If the form is signed by the employee, the one year period commences upon date of filing the form. If unsigned, the one year period commences upon the employee’s receipt of a “filed” stamped copy of the form or otherwise receives notice of the form being filed. If an employee receives medical treatment for the injury after the B-31 form is filed, the employer must file a new form to again commence running of the one year limitations period.

The Mississippi Workers’ Compensation Act serves as the exclusive remedy for any claims by an employee against the employer unless the injury to the employee resulted from a willful or intentional act of the employer. Unlike many states, Mississippi’s workers’ compensation law does not have a provision prohibiting retaliation for filing a workers’ compensation claim. Failure of an employer to maintain workers’ compensation coverage for employees is subject to a common law action for injuries sustained by the employee at work.

Covered employers are required to post a notice provided by the Mississippi Workers’ Compensation Commission notifying employees of workers’ compensation coverage.

Mississippi Employment Security Law
Miss. Code Ann. §§71-5-1 et seq.

Employers who paid wages of $1,500 or more during any quarter in the current or preceding calendar year and employed at least one person for some portion of a day in
each of 20 different calendar weeks are subject to the Mississippi Employment Security Law which provides for payment of weekly unemployment compensation benefits up to 26 weeks.

Claimants may be disqualified for unemployment compensation benefits if:

1. they voluntarily quit or abandon the job without good cause;
2. they are discharged for “gross misconduct” in connection with their work;
3. they willfully make a false statement or false representation of fact, or willfully fail to disclose a material fact for the purpose of obtaining benefits;
4. they fail to either apply for or accept suitable employment without good cause; or
5. they refuse to report to work because they are participating in an active labor strike.

NOTE: There is no disqualification if unemployment is due to an “unjustified lockout” or if the employee is not participating or directly interested in the labor dispute that caused the work stoppage.

Employers are required to post a notice provided by the Mississippi Employment Security Commission notifying employees of entitlement to unemployment benefits.

Employers are also required to keep true and accurate work records containing information as prescribed by the Commission. With respect to each individual worker, the information required to be maintained includes the employee’s name, social security number, place of employment within the state, period covered by each pay period, number of hours worked for each pay period, wages for employment (showing separately the money wages and cash value of other remuneration) and number of hours worked and wages payable in each week.
**Drug and Alcohol Testing**  
*Miss. Code Ann. §§71-7-1 et seq.*

Mississippi has a comprehensive statute for establishing and implementing policies or programs for drug and alcohol testing. The statute is not mandatory, but the employer implementing a drug and alcohol testing program may affirmatively elect application of the statute by a written statement in the employer’s policy and notice in the employment application.

If the employer’s drug and alcohol testing policy is implemented and conducted in accordance with this statute, an employee that is discharged on the basis of a confirmed positive test is deemed by statute to have been discharged for “willful misconduct” and no cause of action for defamation, libel, slander or damage to reputation arises in favor of the employee.

Employers subject to a federal law or regulation governing drug and alcohol testing in the workplace are excluded from the statute’s coverage or application.

**Abstention From Tobacco Use**  
*Miss. Code Ann. §71-7-33*

An employer is prohibited from requiring as a condition of employment that an employee or applicant for employment abstain from smoking or using tobacco products during non-working hours. An employee who smokes or uses tobacco nevertheless is required to comply with any employer policies regulating smoking or tobacco use on the employer’s premises during working hours.

Relief available to an employee discharged or denied employment in violation of this statute includes reinstatement, lost wages and benefits, and payment by employer of reasonable costs in the action.

**Voting Rights**  

An employer is prohibited from discharging, coercing, or threatening with respect to terms and conditions of employment, either directly or indirectly, an employee for exercising his or her voting rights.
The prohibition extends to circulation of any report or statement designed to intimidate, coerce or otherwise influence any employee as to his or her choice of candidate. If the employer has knowledge of such a report or statement being circulated by an employee during work hours, the employer must publicly repudiate it or the employer will be deemed to have ratified circulation of the report or statement.

**E-Verification**  
**Miss. Code Ann. §71-1-57**

An employer is prohibited from hiring any employee who is not a legal United States citizen or a legal alien of the United States. Additionally, an employer is required to register with and utilize the E-Verify Program operated by the Department of Homeland Security to verify the federal employment authorization status of all new hires. Contractors and subcontractors are prohibited from hiring employees whose status has not been E-Verified. An employer is prohibited from discharging a citizen or permanent resident alien while retaining, in a position that requires the same level of skill, an employee who the employer knows to be an unauthorized alien hired after July 1, 2008.

A private employer with two hundred fifty or more employees must have met the verification requirements by July 1, 2008. An employer with between one hundred and two hundred fifty employees must meet the verification requirements by July 1, 2009. And employer with between thirty and one hundred employees must meet the verification requirements by July 1, 2010. All employers must meet the requirements by July 1, 2011.
CHILD LABOR LAWS

Under the Age of 14
Miss. Code Ann. §71-1-17
A minor under the age of 14 may not be permitted to work in a mill, cannery, workshop or manufacturing establishment and employment in such establishments is strictly forbidden.

Ages 14 and 15
Miss. Code Ann. §71-1-19 and §71-1-21
An employer may hire a minor the age of 14 or 15 to work in a mill, workshop or manufacturing facility provided that the child complies with the compulsory school attendance law. The employer must acquire an affidavit from the parent or legal guardian and a certificate from the superintendent or principle of the school district providing

1. the date and place of birth;
2. the last date of school attendance of the child;
3. courses of study and grades earned;
4. the name of the school; and
5. the name of the instructor(s).

The employer is required to preserve these records and maintain a complete registry of all affidavits on file.

Any minor over the age of 14 but less than the age of 16 may not work more than eight hours in one day, or more than forty-four hours in one week. The child cannot be required to work or otherwise be detained in the workplace between the hours of 7:00 p.m. and 6:00 a.m. on any given day.

Violation of Child Labor Laws
Miss. Code Ann. §71-1-129
Any person or employer found to be in violation of the child labor laws shall be guilty of a misdemeanor and subject to a fine between $50 and $100 and prison time between ten and sixty days, or both fine and imprisonment.
GARNISHMENT OF WAGES

Child Support Withholdings
Miss. Code Ann. §§93-11-103 et seq.

Mississippi has specific provisions governing the obligation of an employer to withhold child support payments from an employee’s wages upon issuance of an order for child support withholdings. Under this statutory provision, an employer may not discharge, discipline, refuse to hire or otherwise penalize an employee because of the employer’s duty to withhold child support.

Garnishments for Indebtedness
Miss. Code Ann. §85-3-4

Mississippi has a general garnishment statute setting forth exemptions to and the minimum and maximum amounts which may be withheld from an employee’s wages upon issuance of a garnishment for an indebtedness owed by the employee. The statute is similar to the withholding restrictions set forth in the federal law.
PAYMENT OF WAGES

Payment Twice a Month
Miss. Code Ann. §71-1-35

Employers with fifty or more employees are required to pay wages to employees at least once every two weeks or twice a month. The payment shall include all amounts due for services performed up to at least ten days prior to payment, except for public service corporations, which are not required to make payment for services performed up to more than 15 days prior to time of payment. The requirement of paying once every two weeks or twice monthly does not apply to employees who are employed in an administrative, executive or professional capacity.

Wages Due a Deceased Employee
Miss. Code Ann. §91-7-323 and §91-7-329

If a deceased employee is owed wages and no proceeding has been commenced for administration of the deceased employee’s estate, the employer may pay the wages directly to the surviving spouse of the deceased employee. If there is no surviving spouse, then the wages may be paid as follows in the order of preference provided:

1. surviving children, if adults;
2. mother of deceased employee, if no children;
3. father of deceased employee, if no children or mother;
4. brothers and sisters of deceased employee, if adults and no surviving children, mother or father.

If surviving children are minors, the employer may pay the wages to the Chancery Clerk of the county in which the deceased employee resided.

However, if an estate has been opened and is being administered at the time the wages are to be paid, the employer should pay the wages to the Chancery Clerk for and on behalf of the deceased employee’s estate in the county in which the estate is being administered.
TRADE SECRETS

Uniform Trade Secrets Act
Miss. Code Ann. §§75-26-1 et seq.

Mississippi adopted the Uniform Trade Secrets Act in 1990. Under this statute, misappropriation or unauthorized disclosure of an employer’s secret and commercially valuable information by an employee may be prevented and certain damages may be recovered.

The relief available to employers under the statute includes injunctions, protective orders, recovery of actual losses and unjust enrichment, or, in lieu of damages measured by other means, a reasonable royalty for unauthorized disclosure or use and exemplary damages for willful and malicious misappropriation as well as attorney’s fees.
DISCRIMINATION PROHIBITED IN PUBLIC EMPLOYMENT

Race, Sex, Religion, etc.
Miss. Code Ann. §25-9-149

No person seeking employment in state service or employed in state service shall be discriminated against on the basis of race, color, religion, sex, national origin, age or handicap. This provision governs all aspects of public employment with regard to terms and conditions of the employment relationship including hiring, firing or discipline.

Whistleblower Protection
Miss. Code Ann. §25-9-173

A public employer (agency of the state or political subdivision of the state) may not dismiss or otherwise adversely affect the compensation or employment status of any public employee because the employee testified or provided information to a state investigative body. The law prohibits retaliation or reprisal in connection with the terms and conditions of employment including unwarranted or unsubstantiated reprimands or performance evaluations, demotion, reduction in pay, denial of promotion, suspension, discharge and denial of employment.

A public employer is not prohibited by the statute from taking appropriate personnel action against an employee who knowingly and intentionally provides false information.
CONCLUSION

Although Mississippi does not regulate the employment relationship to the extent its neighboring states do through legislation, the exposure to lawsuits and potential for an employer’s liability is just as high. In today’s litigious society, preventive measures are more important than ever.

Employers are challenged with finding ways to minimize their exposure. To meet this challenge, the employer must be proactive rather than reactive to the personnel issues polluting the employment environment. For this reason, management may wish to conduct an annual labor relations “check up” to identify and consider in advance those practices, policies or procedures which may expose it to liability and/or implementation of those which may reduce the exposure.

*The material contained in this booklet raises numerous and complex issues. If you have specific questions, please contact any attorney in the firm’s Labor and Employment Practice Group.*
McGlinchey Stafford, PLLC is a national law firm providing expertise in a wide variety of legal practice areas. Founded in New Orleans, Louisiana in 1974, the firm’s more than 150 attorneys counsel clients from eight offices across five states: Louisiana, Mississippi, New York, Ohio and Texas. Key areas of practice include business, labor and employment, consumer finance, government, healthcare, litigation and public finance law.

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