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CHAPTER 1

General Provisions

**SECTION 41‑1‑10.** Employers shall post certain labor laws.

 Every employer shall keep posted in a conspicuous place a printed notice stating the provisions of the law relative to the employment of adult persons and children and the regulation of hours and working conditions. The Director of the Department of Labor, Licensing and Regulation or his designee shall furnish the printed form of such notice upon request.

HISTORY: 1962 Code Section 40‑451; 1952 Code Section 40‑451; 1942 Code Section 3253‑13; 1936 (39) 1615; 1993 Act No. 181, Section 959, eff February 1, 1994; 2010 Act No. 137, Section 1, eff March 31, 2010.

Effect of Amendment

The 1993 amendment substituted “Director of the Department of Labor, Licensing and Regulation or his designee” for “Commissioner of Labor”.

The 2010 amendment deleted “in every room where five or more persons are employed” following “posted in a conspicuous place” in the first sentence.

**SECTION 41‑1‑15.** Establishment of drug prevention program in workplace; confidentiality of information concerning test results.

 (A) Notwithstanding any other provision of the law, an employer may establish a drug prevention program in the workplace pursuant to Section 38‑73‑500(B) which shall include:

 (1) a substance abuse policy statement that balances the employer’s respect for individuals with the need to maintain a safe, productive, and drug‑free environment. The intent of the policy shall be to help those who need it while sending a clear message that the illegal use of nonprescription controlled substances or the abuse of alcoholic beverages is incompatible with employment at the specified workplace; and

 (2) notification to all employees of the drug prevention program and its policies at the time the program is established by the employer or at the time of hiring the employee, whichever is earlier.

 (B) All information, interviews, reports, statements, memoranda, and test results, written or otherwise, received by the employer through a substance abuse testing program are confidential communications, but may be used or received in evidence, obtained in discovery, or disclosed in any civil or administrative proceeding.

 (C) Employers, laboratories, medical review officers, insurers, drug or alcohol rehabilitation programs, and employer drug prevention programs, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the employee tested or his designee unless the release is completed through disclosure by an agency of the State in a civil or administrative proceeding, order of a court of competent jurisdiction, or determination of a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum:

 (1) the name of the person who is authorized to obtain the information;

 (2) the purpose of the disclosure;

 (3) the precise information to be disclosed;

 (4) the duration of the consent; and

 (5) the signature of the person authorizing release of the information.

 (D) Information on test results shall not be released for or used or admissible in any criminal proceeding against the employee.

HISTORY: 1997 Act No. 92, Section 2, eff June 10, 1997.

Editor’s Note

The Preamble of 1997 Act No. 92 provides as follows:

“Whereas, the members of the General Assembly recognize the importance of all employers and employees in the State to maintain and operate in a drug‑free workplace, and promote the participation of businesses in drug prevention programs. Through such participation, employers have the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays, and tragedies associated with work related accidents resulting from substance abuse by employees; and

“Whereas, nationally, the cost of substance abuse in the workplace is estimated at a staggering one hundred billion annually, and this cost is paid by employers in many different ways; and

“Whereas, the intention of the act is to provide incentive for employers to prevent drug use and the tragedies associated with work related accidents and to deter the corresponding losses in the form of workers’ compensation claims, personnel, and economic productivity; and

“Whereas, since workers’ compensation insurers typically provide support services to employer‑clients, the General Assembly believes that insurers will compete for the business of employers participating in drug prevention programs and will provide the appropriate premium credit for various classes of employment with a successful program due to the administrative cost savings in many ways including those from a reduction in work related accidents by employees with substance abuse and litigation expenses;”.

**SECTION 41‑1‑20.** Unlawful discrimination against union members.

 Every person who shall discharge or discriminate in the payment of wages against any person because of his membership in a labor organization shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than ten nor more than fifty dollars or be imprisoned not less than ten nor more than thirty days.

HISTORY: 1962 Code Section 40‑453; 1952 Code Section 40‑453; 1942 Code Section 3237; 1932 Code Section 1299; Cr. C. ‘22 Section 194; Cr. C. ‘12 Section 487; 1909 (26) 15; 1924 (33) 1096; 1934 (38) 1364; 1936 (39) 1615; 1941 (42) 119.

**SECTION 41‑1‑30.** Terminating authorized worker and replacing with unauthorized alien; wrongful termination action by discharged employee.

 (A) There is a civil right of action for wrongful termination against an employer who discharges an employee authorized to work in the United States for the purpose of replacing that employee with a person the employer knows or should reasonably know is an unauthorized alien.

 (B) An aggrieved employee must show all of the following:

 (a) the replacement occurred within sixty days of the date of the employee’s termination;

 (b) the replacement worker was an unauthorized alien at the time of the replacement;

 (c) the employer knew or reasonably should have known of the replacement worker’s status; and

 (d) the replacement worker filled duties and responsibilities the employee vacated.

 (C) This section does not create an employment contract for either a public or private employer.

 (D) An employee who brings a civil suit pursuant to this section is limited to the following recovery:

 (1) reinstatement to his former position;

 (2) actual damages; and

 (3) lost wages.

 (E) A cause of action does not arise against an employer who submits the necessary identifying information for all employees through the Systematic Alien Verification of Entitlement (SAVE) program, the E‑Verify Program or a successor program used for verification of work authorization and operated by the United States Department of Homeland Security.

 (F) Any cause of action arising pursuant to this section is equitable in nature and must be brought within one year of the date of the alleged violation.

 (G) For any action brought pursuant to this section, the court may award attorney fees to the prevailing party.

 (H) The provisions of this section do not apply to a private employer who terminates an employee to comply with the provisions of Chapter 8 of Title 41.

 (I) This section takes effect ninety days after the effective date of the act.

HISTORY: 2008 Act No. 280, Section 12, eff 90 days after effective date of act (approved June 4, 2008).

**SECTIONS 41‑1‑40, 41‑1‑50.** Repealed by 2010 Act No. 137, Section 8, eff March 31, 2010.

Editor’s Note

Former Section 41‑1‑40 was entitled “Employers requiring notice from employee quitting work shall post notice of shutdown” and was derived from 1962 Code Section 40‑455; 1952 Code Section 40‑455; 1942 Code Section 7030‑14; 1932 Code Section 1318; Cr. C. ‘22 Section 210; 1912 (27) 750.

Former Section 41‑1‑50 was entitled “Acceptance of payment from relief fund shall be no bar to action for damages” and was derived from 1962 Code Section 40‑456; 1952 Code Section 40‑456; 1942 Code Section 7701; 1932 Code Section 7701; Civ. C. ‘22 Section 4275; Civ. C. ‘12 Section 2808; 1905 (24) 962.

**SECTION 41‑1‑60.** Certain transactions between carriers or shippers and labor organizations prohibited; penalties.

 (1) The term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

 (2) It shall be unlawful for any carrier or shipper of property, or any association of such carriers or shippers, to agree to pay, or to pay, to or for the benefit of a labor organization, directly or indirectly, any charge by reason of the placing upon, delivery to, or movement by rail, or by a railroad car, of a motor vehicle, trailer, or container which is also capable of being moved or propelled upon the highways.

 (3) It shall be unlawful for any labor organization to accept or receive from any carrier or shipper of property, or any association of such carriers or shippers, any payment described in item (2) hereof.

 (4) Any person who agrees to pay, or who does pay, or who agrees to receive, or who does receive, any payment described in item (2) hereof shall be guilty of a misdemeanor and on conviction shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned for a period of not less than thirty days, nor more than one year, in the discretion of the court. Each act of violation, and each day during which such an agreement remains in effect, shall constitute a separate and distinct offense.

HISTORY: 1962 Code Section 40‑457; 1962 (52) 1739.

**SECTION 41‑1‑65.** Employers granted immunity from liability for disclosure of information.

 (A) As used in this section:

 (1) “Employer” means any person, partnership, for profit or nonprofit corporation, limited liability corporation, the State and its political subdivisions and their agents that employ one or more employees. As used in this definition, “agent” means any former supervisor or the employer’s designee.

 (2) “Employee” means any person employed by an employer.

 (3) “Evaluation” means a written employee evaluation which was conducted by the employer and signed by the employee, including any written employee response to the evaluation, before the employee’s separation from the employer and of which the employee, upon written request, shall be given a copy.

 (4) “Former employee” means an individual who was previously employed by an employer.

 (5) “Job performance” includes, but is not limited to, attendance, attitude, awards, demotions, duties, effort, evaluations, knowledge, skills, promotions, and disciplinary actions.

 (6) “Prospective employer” means any employer to which a prospective employee has made application, either oral or written, or forwarded a resume or other correspondence expressing an interest in employment.

 (7) “Prospective employee” means any person who has made an application either oral or written or has sent a resume or other correspondence to a prospective employer indicating an interest in employment.

 (B) Unless otherwise provided by law, an employer shall be immune from civil liability for the disclosure of an employee’s or former employee’s dates of employment, pay level, and wage history to a prospective employer.

 (C) Unless otherwise provided by law, an employer who responds in writing to a written request concerning a current employee or former employee from a prospective employer of that employee shall be immune from civil liability for disclosure of the following information to which an employee or former employee may have access:

 (1) written employee evaluations;

 (2) official personnel notices that formally record the reasons for separation;

 (3) whether the employee was voluntarily or involuntarily released from service and the reason for the separation; and

 (4) information about job performance.

 (D) This protection and immunity shall not apply where an employer knowingly or recklessly releases or discloses false information.

HISTORY: 1996 Act No. 281, Section 1, eff May 6, 1996.

Editor’s Note

1996 Act No. 281, Section 2, provides:

“SECTION 2. The provisions of Section 41‑1‑65 of the 1976 Code, as added by Section 1 of this act, shall apply to causes of action occurring on or after the effective date of this act.”

**SECTION 41‑1‑70.** Liability of employer for dismissal or demotion of employee who complies with subpoena or serves on jury.

 Any employer who dismisses or demotes an employee because the employee complies with a valid subpoena to testify in a court proceeding or administrative proceeding or to serve on a jury of any court is subject to a civil action in the circuit court for damages caused by the dismissal or demotion.

 Damages for dismissal are limited to no more than one year’s salary or fifty‑two weeks of wages based on a forty‑hour week in the amount the employee was receiving at the time of receipt of the subpoena.

 Damages for demotion are limited to the difference for one year between the salary or wages based on a forty‑hour week which the employee received before the demotion and the amount he receives after the demotion.

HISTORY: 1986 Act No. 320, eff February 20, 1986 and retroactive to January 1, 1984 (approved by the Governor on February 20, 1986).

**SECTION 41‑1‑80.** Prohibition against retaliation based upon employee’s institution of, or participation in, proceedings under Workers’ Compensation Law; civil actions.

 No employer may discharge or demote any employee because the employee has instituted or caused to be instituted, in good faith, any proceeding under the South Carolina Workers’ Compensation Law (Title 42 of the 1976 Code), or has testified or is about to testify in any such proceeding.

 Any employer who violates any provision of this section is liable in a civil action for lost wages suffered by an employee as a result of the violation, and an employee discharged or demoted in violation of this section is entitled to be reinstated to his former position. The burden of proof is upon the employee.

 Any employer shall have as an affirmative defense to this section the following: wilful or habitual tardiness or absence from work; being disorderly or intoxicated while at work; destruction of any of the employer’s property; failure to meet established employer work standards; malingering; embezzlement or larceny of the employer’s property; violating specific written company policy for which the action is a stated remedy of the violation.

 The failure of an employer to continue to employ, either in employment or at the employee’s previous level of employment, an employee who receives compensation for total permanent disability, is in no manner to be considered a violation of this section.

 The statute of limitations for actions under this section is one year.

HISTORY: 1986 Act No. 451, eff May 26, 1986.

**SECTION 41‑1‑85.** Personnel action based on use of tobacco products outside of workplace prohibited.

 The use of tobacco products outside the workplace must not be the basis of personnel action, including, but not limited to, employment, termination, demotion, or promotion of an employee.

HISTORY: 1990 Act No. 593, Section 2A, eff June 25, 1990.

**SECTION 41‑1‑90.** Requirement of notice that completion of training program does not guarantee employment.

 Every employer in this State who requires prospective employees to complete a job training program conducted either by the employer or on behalf of the employer by an outside organization prior to consideration for employment shall give each prospective employee before beginning the training program a notice in the form prescribed by Section 41‑1‑100 if completion of the job training program does not guarantee the prospective employee regular employment on a permanent basis by the employer.

HISTORY: 1986 Act No. 332, Section 1, eff July 1, 1986.

**SECTION 41‑1‑100.** Form of notice required by Section 41‑1‑90.

 The notice required by Section 41‑1‑90 shall appear on any printed matter promoting the job training program and on every application for enrollment in the program in substantially the following form: “Notice. Completion of this job training program does not guarantee you regular employment on a permanent basis by the employer who requires you to complete the program.”

HISTORY: 1986 Act No. 332, Section 2, eff July 1, 1986.

**SECTION 41‑1‑110.** Conspicuous disclaimer of contract of employment created by handbook, personnel manual or other document issued by employer.

 It is the public policy of this State that a handbook, personnel manual, policy, procedure, or other document issued by an employer or its agent after June 30, 2004, shall not create an express or implied contract of employment if it is conspicuously disclaimed. For purposes of this section, a disclaimer in a handbook or personnel manual must be in underlined capital letters on the first page of the document and signed by the employee. For all other documents referenced in this section, the disclaimer must be in underlined capital letters on the first page of the document. Whether or not a disclaimer is conspicuous is a question of law.

HISTORY: 2004 Act No. 185, Section 1, eff March 15, 2004.