State Resources
Utah Labor Commission

http://laborcommission.utah.gov

Reviewing Your
UTAH
Job Offer

Federal Resources
Equal Employment
Opportunity Commission
http://www.eeoc.gov

Does your job offer require that you sign a non-compete agreement?

Under current law, non-compete agreements in Utah must be no longer than one year, must be limited to a reasonable geographic area, and must be intended to protect only legitimate business interests of the employer.

In 2016, Utah passed the Post Employment Restriction Act, which applies to both written and oral post-employment non-compete agreements that are entered into after May 10, 2016. The law expressly prohibits employers and employees from entering into non-compete agreements for longer than one year from the employee's termination date. Non-competes that extend beyond this time period are considered void under the Act.

In addition to the one-year time limitation, to be enforceable under Utah law, a non-compete agreement must meet the following requirements: (1) be supported by legal consideration (an offer of employment is ample consideration); (2) be negotiated in good faith; (3) be necessary to protect the good will of the business; (4) be reasonable in geographic area and scope (the more local the interest, the more narrow the limitation must be); and (5) the employment relationship must be deemed special, unique and extraordinary. In addition to non-compete clauses, Utah employers may use different restrictive covenants to protect their interests. For example, a Utah employer may have you sign a non-disclosure agreement that prevents employees from discussing an employer's trade secrets or confidential information outside of the company. Utah employers may also use non-solicitation agreements that prevent employees from soliciting current or prospective customers for a certain period time. Both of these restrictive covenants are narrower in scope than non-compete clauses, and therefore courts are more likely to enforce them.

Does your salary match the salary of your co-workers?

There is no Utah law which requires an employer to provide salary information regarding other employees; however, under federal law (the National Labor Relations Act), employers are prohibited from instituting policies that restrict employees from discussing pay with one another.

Utah does not have a separate equal pay law requiring that men and women be paid equally for equal work. However, under the Utah Antidiscrimination Act (UADA), employers are prohibited from compensation discrimination based on race, color, sex, pregnancy and childbirth, age (40 years and over), religion, national origin, disability, sexual orientation, or gender identity (Utah Code § 34A-5-106). Under the UADA, it is unlawful for an employer to pay different wages or salaries to employees having substantially equal experience, responsibilities, and skills for the particular job. The law provides an exception for increases in pay based on seniority if the increases are uniformly applied and available to all employees on a substantially proportional basis. The law does not prohibit an employer and employee from agreeing to a rate of pay or work schedule designed to protect the employee from loss of Social Security payment or benefits if the employee is eligible for those payments.

The UADA applies to all public employers and private employers with 15 or more employees.
Most employers that are engaged in interstate commerce are subject to the requirements of the federal Equal Pay Act, which prohibits paying men and women differently for substantially equal jobs.

Assuming your employment is "at will," can you negotiate for contractual protections?

Utah is an "employment-at-will" state. This means that an employer may generally terminate an employee at any time and for any reason, unless a law or contract provides otherwise. For example, a federal or state law, collective bargaining agreement, or individual employment contract may place limitations on an otherwise at-will relationship. There is no law preventing an employee from attempting to negotiate for a contract with his or her employer, and he or she can certainly try to negotiate for additional protection in the employment contract. For example, an employee can seek a provision requiring notice pay or severance pay if terminated or a provision barring termination absent "just cause."

Have you properly excluded your individual inventions prior to accepting your job offer?

Your employer may have you sign an agreement clarifying that any invention you develop while working for it becomes their property and/or that you are required to assign your rights to it. This agreement is limited to inventions that are "within the subject matter" of the employment relationship and does not apply to inventions you create before joining the employer. Usually, there is a place in the agreement to identify any such prior inventions and you should make sure you identify any such inventions and avoid using them or incorporating them into work you do for the employer. Additionally, the Utah Employment Inventions Act prevents an employer from requiring an employee to assign or license to the employer any intellectual property or invention created by the employee entirely on his or her own time and not as part of the employment relationship.

Does your job offer require that you sign a forced arbitration agreement?

Utah public policy strongly favors arbitration, and Utah courts historically have liberally construed arbitration clauses. On March 3, 2022, President Joe Biden signed into law the Ending of Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021. This new law provides that "[n]o predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute." The Act is retroactive in that it bans mandatory arbitration agreements or joint action waivers for sexual assault or sexual harassment disputes if the arbitration agreement or joint action waiver was signed before the claim arose, although the victim can elect arbitration if they prefer. However, the Act does not apply to arbitrations involving sexual assault or sexual harassment disputes that are already pending. Finally, employers are not allowed to require claims of sexual harassment or sexual assault be brought in arbitration. Those types of claims may be brought in court, either individually or as collective or class claims, regardless of the existence of an arbitration agreement. Finally, employers are not allowed to require claims of sexual harassment or sexual assault be brought in arbitration. Those types of claims may be brought in court, either individually or as collective or class claims, regardless of the existence of an arbitration agreement.

Authors: Kelly Applegate (Kelly Applegate Law), Kristin Smith (MIT Equal Pay Working Group)