

THIS IS NOT LEGAL ADVICE

State Resources

Alabama

Department of Labor

https://labor.alabama.gov/equal_opportunity.aspx

Reviewing Your

ALABAMA

Job Offer

Federal Resources

Equal Employment

Opportunity Commission

<http://www.eeoc.gov>

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

In Alabama, Code provision 8-1-190(a) provides that “[e]very contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind otherwise than is provided by this section is to that extent void.” As such, Alabama’s overarching approach is to ban non-compete agreements unless a non-compete agreement otherwise meets an exception provided in Alabama law. Exceptions may include scenarios where a contract is drafted to preserve a protectable interest, as defined by Alabama law, so long as other aspects of that contract are also in compliance with Alabama law.

Alabama Code provisions 8-1-190 to 8-1-197 detail aspects related to void contracts as well as contracts allowed to preserve protectable interests.

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

In 2019, Alabama passed the Clark-Figures Equal Pay Act (CFEPA), which provides that an employer, including the state or any of its political subdivisions, including public bodies, may not pay any of its employees at wage rates less than the rates paid to employees of another sex or race for equal work within the same establishment on jobs the performance of which requires equal skill, effort, education, experience, and responsibility, and performance under similar working conditions, except where the payment is made pursuant to any of a seniority system, a merit system, a system that measures earning by quantity or quality of production, or a differential based on any factor other than sex or race. Multiple resources reviewed also support the reading that the CFEPA, which requires employees seeking relief to plead with particularity to demonstrate that the employee was paid less than someone for equal work, prohibits employers from discharging or retaliating against employees who share their wages/salaries with other employees or ask about another employee's wage/salary. Additionally, the CFEPA prohibits double recovery for claims that are filed under the CFEPA as well as the federal EPA, requiring that an employee who recovers from both is required to return to the employer the lesser amount provided from either claim.

Additionally, the National Labor Relations Act prohibits the rights of any employee covered by the Act to discuss wages in face-to-face conversations and written messages. While employers may have policies against the use of company equipment when using some types of electronic communications, like social media, it is still the case that policies that specifically prohibit the discussion of wages are themselves unlawful.

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

It is not common to negotiate for additional contractual protections, but this is a question that should especially be reviewed for potential employees seeking executive level positions as well as positions that require an employee with specialized skills. For these situations, it is recommended to seek advice of an attorney. As an additional factor, employees who enter into at-will employment contracts may have the "at will" status of their employment modified by their Employer's Employee Handbook. In situations where a handbook provides for guaranteed employment if certain work successes are met, an Alabama court may view that handbook language as superseding an underlying at-will employment contract. And further to these general factors, employees may also be able to negotiate for various job benefits, such as training opportunities. Even when it is not possible to negotiate for benefits that are governed by company-wide policies, such as perhaps retirement benefits or health benefits, it is often beneficial to compare and consider these benefits when assessing multiple job offers.

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

As an initial matter, inventor(s) are presumed to be owners of any patent rights that stem from their invention unless those patent rights have otherwise been properly assigned. See 37 CFR 1.41 Inventorship; See Manual of Patent Examination Procedure 2109 Inventorship.

With that said, it is not unusual for employers to ask employees to sign an agreement requiring employees to assign inventions created during the course of their employment to the employer. Even without this written agreement, employers in Alabama may try to assert a "shop right" over inventions created during the course of an employee's employment, though this assertion - even if successful - may be limited to protectible interests of the employer. It is often beneficial for employees who have their own inventions to identify any and all inventions and other intellectual property (IP) to which they intend to retain ownership rights, It is highly encouraged to consult with a lawyer when employees are looking to negotiate a contract that involves the assignment of individual inventions.

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

On March 3, 2022, President Biden signed into law the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, prohibiting employers from enforcing predispute arbitration agreements and class action waivers that concern sexual harassment and sexual assault claims. As a result of this act, 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.

Additional materials related to Alabama specifically can be found from the Alabama Center for Dispute Resolution, linked on the Resources Page. https://alabamaadr.org/web/publicinfo/Arbitration/arbitration_agreements_more.php

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