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State Resources

Arkansas Department of
Labor and Licensing
<https://www.labor.arkansas.gov>

Reviewing Your

ARKANSAS

Job Offer

Federal Resources

Equal Employment
Opportunity Commission
<http://www.eeoc.gov>

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

Arkansas non-compete clauses are governed under Arkansas Code § 4-75-101. Under this code, a covenant not to compete is enforceable if the agreement is ancillary to an employment relationship or part of an otherwise enforceable employment agreement or contract to the extent that:

- (1) the employer has a protectable business interest; and
- (2) the covenant not to compete is limited with respect to time and scope in a manner that is not greater than necessary to defend the protectable business interest of the employer.

This statute also enumerates some protectable business interests of the employer, including trade secrets, intellectual property, customer lists, and goodwill with customers, among others. When negotiating a non-compete agreement, prospective employees are encouraged to seek legal advice to ensure the negotiated agreement is in compliance with Arkansas law.

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

Arkansas' Equal Pay Law, encoded at Arkansas Code § 11-4-610, provides that employers are not allowed to discriminate in the payment of wages as between the sexes or to pay any female in his or her employe salary or wage rates less than the rates paid to male employees for comparable work. Variations of rates of pay are allowed, however, when based on any reasonable differentiation except difference of sex. This statute enumerates some example of reasonable bases for differentiation, including difference in seniority, experience, training, skill, and ability.

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. 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. 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.

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.

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