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State Resources
South Dakota Department of Labor and Regulation
https://dlr.sd.gov/human_rights/

Reviewing Your **South Dakota** Job Offer

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

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

South Dakota provides that except as otherwise provided in SD § 53-9-11.2, which lists a number of professions that do not allow non-compete agreements, an employee may agree with an employer at the time of employment or at any time during employment not to engage directly or indirectly in the same business or profession as that of the employer for any period not exceeding two years from the date of termination of the agreement and not to solicit existing customers of the employer within a specified county, first- or second-class municipality, or other specified area for any period not exceeding two years from the date of termination of the agreement, if the employer continues to carry on a like business therein.

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

South Dakota law prohibits differential rate of pay based on gender. *See* SD Codified L § 60-12-15 (through 2012). In particular, this statute provides that no employer smay discriminate between employees on the basis of sex, by paying wages to any employee in any occupation in this state at a rate less than the rate at which the employer pays any employee of the opposite sex for comparable work on jobs which have comparable requirements relating to skill, effort, and responsibility, but not to physical strength.

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 or 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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