

Introduction to the August 2026 edition of *Termination of Employment*

Termination of Employment, written by James O. Castagnera, Patrick J. Cihon, and Andrew P. Morriss, addresses important recent developments and trends in the termination of employees and discusses the federal and state regulation of employee terminations.

This August 2026 edition of *Termination of Employment* includes updated Chapters 1, 5, 22, 32, 36, 41, and 42. Among the highlights from these updated chapter are:

- **§ 1:6. Federal statutes on employment discrimination—Affirmative action: Executive Order 11246:** This Executive Order was revoked on January 21, 2025, when President Donald Trump issued Executive Order 14173.
- **§ 1:10. Topics of employment discrimination—Sex:** The Pregnant Workers Fairness Act requires covered employers (those with 15 or more employees) to provide reasonable accommodations to known limitations related to a worker's pregnancy, childbirth, or related medical conditions, absent undue hardship.
- **§ 1:28. Unintentional discrimination: Disparate impact:** Executive Order 14281 announces an administration policy "to eliminate the use of disparate-impact liability in all contexts to the maximum extent possible."
- **§ 1:41. Fair Labor Standards Act:** Two Department of Labor rule-makings central to FLSA practice have collapsed since 2024—one on overtime salary thresholds and one on independent contractor classification.
- **§ 1:131. National Labor Relations Act:** The NLRB's 2025 was dominated by quorum litigation arising out of President Trump's January 2025 removal of Member Gwynne Wilcox.
- **§ 5:34. Payment of wages:** An alternative means of recovery of wages owed is available if the amount of the wages claimed does not exceed \$12,000.
- **§ 22:12. Drug and alcohol testing:** The reasonable suspicion standard requires that the employer must establish specific and articulable facts that, taken together with rational inferences from those facts, reasonably support the belief that an employee may be under the influence of a substance, except that the existence of reasonable suspicion may not be based exclusively on any of the following: (1) information received from an anonymous informant; (2) any information tending to indicate that an employee may have possessed or used a substance off duty, except when the employee is observed possessing or ingesting any substance either while on the employer's premises or in the proximity of the employer's

premises during or immediately before the employee's working hours; or (3) a single work-related accident without the employee also exhibiting observable behavior indicating impairment at the time of the accident.

- **§ 22:25. Miscellaneous:** The Maine Act to Regulate Employer Surveillance to Protect Workers, effective January 11, 2026, requires employers to notify employees and prospective employees of any use of surveillance by the employer.
- **§ 22:32. Payment of wages:** Maine, effective July 29, 2026, requires employers with 10 or more employees to ensure that job postings include a statement that lists the prospective range of pay the employer will offer to a successful applicant.
- **§ 32:14. Family and medical leave:** Effective January 1, 2026, New Hampshire employers with 20 or more employees are required to provide employees with up to 25 hours of unpaid medical leave to attend medical appointments related to childbirth, postpartum care, and pediatric care for their children within the first year of birth or adoption.
- **§ 32:17. Military service:** New Hampshire law provides employment protections for the spouses of military service members who are involuntarily mobilized for up to one year and one day in support of war, national emergencies, or contingency operations, ensuring job security for families during military conflicts.
- **§ 36:4. Sex:** The North Carolina Equal Employment Practices Act does not mention pregnancy in its text.
- **§ 36:23. Workers' compensation claims:** To allege a workers' compensation retaliation claim, the employee must have filed a claim or complaint, initiated an inquiry, investigation, inspection, proceeding or other action, or testified or provided information to any person with respect to workers' compensation proceedings.
- **§ 36:30. Other tort claims:** A public employee's claim that she suffered "false imprisonment, slander, and libel" caused by her public employer were ruled to be outside the jurisdiction of the North Carolina Industrial Commission's jurisdiction under the state's Torts Claims Act.
- **§ 41:1. Fair employment practices overview:** Effective January 24, 2026, a Crown Act added hair-based discrimination to the list of prohibited motivations.
- **§ 41:5. Sexual orientation:** As of March 2026, at least 80 local and county governments across Pennsylvania had adopted explicitly LGBTQ-inclusive nondiscrimination ordinances.
- **§ 41:21. Whistleblowing:** The Pennsylvania Whistleblower Law's remedies preclude a wrongful discharge claim.
- **§ 41:27. Employment contracts:** In order to be enforceable, an arbitration provision in an employment contract need not define the word "arbitrate" nor must the employee expressly waive the right to a civil trial.
- **§ 42:4. Sex:** In 2025, the Supreme Court of Puerto Rico confirmed that the Women's Advocate Office of Puerto Rico has

broad authority to investigate private employers and impose administrative sanctions for violations of Puerto Rico laws protecting women in the workplace.

- **§ 42:27. Employment contracts:** Private employment arbitration clauses are enforceable for discrimination claims under Act 100, provided the Federal Arbitration Act applies.

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