

## Five Workplace Rights Employees Think They Have

Karen Vandehei, CTS

Accurate Placement, L.C.

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Have you ever heard your employees say “I have the right to \_\_\_\_\_” (fill in the blank), and “you need to” comply with whatever they are asking? As a Certified Temporary Staffing Specialist, I have handled many situations where employees have asserted a variety of commonly held myths about workplace rights. Below are the five most common workplace right myths we encounter.

Myth #1: I know I have the right to have two 15 minute breaks every day.

There is no federal law that requires workers be given rest or meal breaks, and Arizona does not have a law providing for such breaks. If you do provide a rest break of less than 30 minutes, however, employers must do so with pay. If you do provide a meal break and if such meal breaks are unpaid, the meal break must be at least 30 minutes and must be completely duty free. If an employee engages in any work during the meal break, the break time must be paid and counted toward hours worked for overtime purposes.

Myth #2: I have the right to see my employee file.

There is no federal or Arizona law requiring employers to allow employees to view their employee file. Please note, however, that many other states do require employers to allow employees such a review.

Myth #3: I can “bank” my time and use it to make up lost work time in the future (in other words, roll overtime hours from this week into next week when I will be out of the office).

This is something employees often want to do. Be careful, however, because with only extremely limited exception, overtime hours in any given week must be paid at time and a half the employee’s regular rate of pay. This is true even if the employee wants to roll hours into a future week. In fact, nonexempt employees cannot waive their rights to overtime pay. Accordingly, if the employee works 30 hours in one week and 50 hours in another week and says to the employer, “Let’s just call it even,” the employer (as tempting as it may be to do otherwise) simply may *not* do so and must pay the 10 hours of overtime during the 50 hour week. Further, Arizona Revised Statute, Section 23-351 states “Each employer shall, on each of the regular paydays, pay to the employees all wages due the employees up to such date...” Thus, in almost all circumstances, it is not permissible to let employees “bank” time for another pay period.

Myth #4: I know that potential employers cannot ask me how old I am before they hire me.

This question, in and of itself, does not violate the Age Discrimination in Employment Act (which creates a protected class status for applicants and employees 40 years of age and older). However, it is true that employers should not ask the question as it elicits an answer that the employer does not want to know – namely, the age of the applicant/employee. Employers with 20 or more employees should base all employment decisions on factors other than age, and employees with 15 or more employees should base all employment decisions on factors other than other protected class statuses such as gender, race, color, religion, national origin, disability, and genetics.

Myth #5: Arizona is a Right to Work State, and I cannot be fired without a reason.

It is true Arizona is a Right to Work state, however “right to work” means “no person shall be denied the opportunity to obtain or retain employment because of non-membership in a labor organization”, Arizona Revised Statute, Section 23-1302. Accordingly, right to work simply means employees do not have to join a union to work in Arizona. Arizona is actually an “at will” state which means that an employee may resign at any time and an employer may terminate the employment relationship for any or no reason (provided it is not an unlawful reason

such as for example, unlawful discrimination, unlawful retaliation, in violation of a contract, or other unlawful reason). Some examples of unlawful reasons include but, of course, are not limited to violations of:

- Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin;
- the Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- the Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older;
- Title I and Title V of the Americans with Disabilities Act of 1990, as amended (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;
- Sections 501 and 505 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified individuals with disabilities who work in the federal government;
- Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits employment discrimination based on genetic information about an applicant, employee, or former employee; and
- The Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination.

Disclaimer: Please check the laws in your state, and consult legal counsel. Accurate Placement is not a law firm and I urge you to discuss any of your concerns on these and any legal matters with your legal counsel. Review of this document provided by Josh Woodard of Snell & Wilmer.

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