

Since 1953

LABOR LAWS

FEDERAL

SOUTH DAKOTA

FEDERAL MINIMUM WAGE **\$7.25 PER HOUR**

BEGINNING JULY 24, 2009

The law requires employers to display this poster where employees can readily see it. **OVERTIME PAY**

FED

At least 1¹/₂ times the regular rate of pay for all hours worked over 40 in a workweek.

CHILD LABOR

An employee must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm iobs declared hazardous by the Secretary of Labor. Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous iobs with certain work hours restrictions. Different rules apply in agricultural employment.

TIP CREDIT

Employers of "tipped employees" who meet certain conditions may claim a partial wage credit based on tips received by their employees. Employers must pay tipped employees a cash wage of at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee's tips combined with the employer's cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference.

NURSING MOTHERS

The FLSA requires employers to provide reasonable break time for a nursing mother employee who is subject to the FLSA's overtime requirements in order for the employee to express breast milk for her nursing child for one year after the child's birth each time such employee has a need to express breast milk. Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by the employee to express breast milk.



SD

EMPLOYEE RIGHTS UNDER THE FAIR LABOR STANDARDS ACT

ENFORCEMENT

The Department has authority to recover back wages and an equal amount in liquidated damages in instances of minimum wage, overtime, and other violations. The Department may litigate and/or recommend criminal prosecution. Employers may be assessed civil money penalties for each willful or repeated violation of the minimum wage or overtime pay provisions of the law. Civil money penalties may also be assessed for violations of the FLSA's child labor provisions. Heightened civil money penalties may be assessed for each child labor violation that results in the death or serious injury of any minor employee, and such assessments may be doubled when the violations are determined to be willful

or repeated. The law also prohibits retaliating against or discharging workers who file a complaint or participate in any proceeding under the FLSA.

ADDITIONAL INFORMATION

Certain occupations and establishments are exempt from the minimum wage, and/or overtime pay provisions

Special provisions apply to workers in American Samoa, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.

Some state laws provide greater employee protections; employers must comply with both. Some employers incorrectly classify workers as "independent contractors" when they are actually employees under the FLSA. It is important to know the difference between the two because employees (unless exempt) are entitled to the FLSA's minimum wage and overtime pay protections and correctly classified independent contractors are not.

Certain full-time students, student learners,

apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.

WH1088

REV. 07/2016

1-866-487-9243 WAGE AND HOUR DIVISION UNITED STATES TTY: 1-877-889-5627 DEPARTMENT OF LABOR www.dol.gov/whd

2022 Minimum Wage Requirement

\$9.95/Hour

MINIMUM WAGE

See SDCL 60-11-3 and 60-11-3.2. Employers with tipped employees must pay a cash wage of no less than \$4.975 per hour, which is no less than 50% of the state minimum wage. See SDCL 60-11-3.1. South Dakota state minimum requirements apply

CONTACT For questions or to report a violation, contact the DLR Division of Labor and Management, Wage and Hour Office at:

> 123 W. MISSOURI AVE. PIERRE, SD 57501

EMPLOYEE RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

LEAVE ENTITLEMENTS

FED

Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within 1 year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

BENEFITS & PROTECTIONS

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

ELIGIBILITY REQUIREMENTS

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave;* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite
- *Special "hours of service" requirements apply to airline flight crew employees.

REOUESTING LEAVE

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave gualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

EMPLOYER RESPONSIBILITIES

Private Employers, State and Local Governments, **Educational Institutions, Employment Agencies and Labor**

Organizations

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

DISABILITY

FED

Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

SEX (WAGES)

AGE

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages

Equal Employment Opportunity is THE LAW

employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

RETALIATION

All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

WHAT TO DO IF YOU BELIEVE

DISCRIMINATION HAS OCCURRED There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected:

The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (tollfree) or 1-800-669-6820 (toll-free TTY number for individuals with hearing impairments). EEOC field office information is available at www.eeoc.gov or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at www.eeoc.gov.

Employers Holding Federal Contracts or Subcontracts Applicants to and employees of companies with a Federal government contract or subcontract are protected under Federal law

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

from discrimination on the following bases:

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

INDIVIDUALS WITH DISABILITIES Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability

requires affirmative action to employ and advance in employment disabled veterans recently separated veterans (within three years of discharge or release from active duty), other protected veterans (veterans who served during a war or in a campaign or expedition for which a campaign badge has been authorized), and Armed Forces service medal veterans (veterans who, while on active duty, participated in a U.S. military operation for which an Armed Forces service medal was awarded).

RETALIATION

Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination under these Federal laws. Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 1-800-397-6251 (toll-free) or (202) 693-1337 (TTY). OFCCP may also be contacted by e-mail at OFCCP-Public@dol.gov, or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

Programs or Activities Receiving Federal Financial Assistance

RACE, COLOR, NATIONAL ORIGIN, SEX In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

INDIVIDUALS WITH DISABILITIES

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employmer

to all employees; however, no minimum wage requirements apply to independent contractors.

PHONE: 605.773.3681 Fax: 605.773.4211

Additional information from the South Dakota Department of Labor and Regulation available at dlr.sd.gov/employment_laws

NOTICE: This state has its own minimum wage law. Employers are also required to display the federal Employee Rights Under the Fair Labor Standards Act posting, which indicates the federal minimum wage. Where federal and state rates both apply to an employee, the U.S. Department of Labor dictates that the employee is entitled to the higher minimum wage rate.

THIS NOTICE IS FOR INFORMATIONAL PURPOSES ONLY.

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C. Death Benefits

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Guide to Workers' Compensation Law in South Dakota July 1, 2021 to June 30, 2022

SOUTH DAKOTA DEPT. OF LABOR & REGULATION dlr.sd.gov

Summary of Workers' Compensation Law The Division of Labor and Management, South Dakota Department of Labor and Regulation has summarized the basic provisions of our state's workers' compensation law. However, the information contained in this brochure is general in nature and is not intended as a substitute for legal advice. Changes in the law or specific facts of a case may result in legal interpretations different from those presented here. Anyone having further questions should contact the Division.

I. Workers' Compensation

Workers' compensation is an insurance program that pays medical and disability benefits for work-related injuries and diseases. Workers' compensation protects both employees and employers. Each covered employee has a right to benefits if injured on the job. In return, he or she forfeits the right to sue the employer for job-related injuries.

South Dakota law permits all employers to provide coverage rather than assume direct liability for workplace injuries. Thus, most employers obtain coverage by purchasing an insurance policy. Those employers that do not must prove they are financially secure enough to pay full benefits for any injuries to employees. These self-insurers are certified and regulated by the Department of Labor and Regulation.

II. Non-covered Employees The following employees are exempt:

- Domestic servants, unless working for an employer for more than 20 hours in any calendar week and for more than six weeks in any 13-week period Farm or agricultural laborers
- One whose employment is not in the usual course of the trade, business, occupation or profession of the employer (independent contractor). This includes real estate brokers and owner operators of trucks who are certified as exempt by the Department.
- Certain elected officials of the state or any subdivision of state government Workfare participants

III. Benefits

Benefits are not allowed when injury is due to willful misconduct, intoxication, illegal use of drugs or failure to use a furnished safety appliance. A false representation as to health at the time of obtaining employment may also preclude awarding of benefits. A. Medical

The employer or insurance carrier must furnish necessary first aid and medical, surgical and hospital services, including artificial members and body aids. Prosthetic devices, if damaged, are considered an injury. Repair or replacement of hearing aids, eye glasses, contact lenses and dentures must also be furnished if damaged or destroyed in an accident which caused bodily injury compensable under the law. Medical services will be subject to a fee schedule and in no case may a health care provider charge a higher price to an injured worker who is eligible for workers' compensation benefits

The employee has the right to make the initial selection of a medical practitioner (defined as a licensed health care provider) and must notify the employer of this selection

Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave a<mark>nd, if eligi</mark>ble, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

ENFORCEMENT

DEPARTMENT

UNITED STATES

OF LABOR

OF AMERICA

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

For additional information or to file a complaint:



U.S. Department of Labor • Wage and Hour Division • WH1420

FED

EMPLOYEE RIGHTS EMPLOYEE POLYGRAPH PROTECTION ACT

The Employee Polygraph Protection Act prohibits most private employers from using lie detector tests either for pre-employment screening or during the course of employment.

PROHIBITIONS

Employers are generally prohibited from requiring or requesting any employee or job applicant to take a lie detector test, and from discharging, disciplining, or discriminating against an employee or prospective employee for refusing to take a test or for exercising other rights under the Act.

EXEMPTIONS

Federal, State and local governments are not affected by the law. Also, the law does not apply to tests given by the Federal Government to certain private individuals engaged in national security-related activities. The Act permits polygraph (a kind of lie detector) tests to be administered in the private sector, subject to restrictions, to certain prospective employees of security service firms (armored car, alarm, and guard), and of pharmaceutical manufacturers, distributors and dispensers.

The Act also permits polygraph testing, subject to restrictions, of certain employees of private firms who are reasonably suspected of involvement in a workplace incident (theft, embezzlement, etc.) that resulted in economic loss to the employer.

The law does not preempt any provision of any State or local law or any collective bargaining agreement which is more restrictive with respect to lie detector tests.

EXAMINEE RIGHTS

Where polygraph tests are permitted, they are subject to numerous strict standards concerning the conduct and length of the test. Examinees have a number of specific rights, including the right to a written notice before testing, the right to refuse or discontinue a test, and the right not to have test results disclosed to unauthorized persons.

ENFORCEMENT

OF LABOR

OF AMERICA

SD

The Secretary of Labor may bring court actions to restrain violations and assess civil penalties against violators. Employees or job applicants may also bring their own court actions.

THE LAW REQUIRES EMPLOYERS TO DISPLAY THIS POSTER WHERE EMPLOYEES AND JOB APPLICANTS CAN READILY SEE IT. DEPARTMENT 1-866-487-9243 WAGE AND HOUR DIVISION WHD UNITED STATES TTY: 1-877-889-5627 UNITED STATES DEPARTMENT OF LABOR www.dol.gov/whd WH1462 REV. 07/2016

Notice to Employees: **Availability of Unemployment Compensation**

Employees in this establishment are covered under the South Dakota Reemployment Assistance (RA) law (formerly known as Unemployment Insurance). Benefits are available to workers who become

PLEASE POST THIS NOTICE

IN A VISIBLE PLACE.

SD

To file a claim online, visit RAclaims.sd.gov

To file a claim by phone, call the Claims Call Center

24 hours a day, seven days a week.

to women and men performing substantiall equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

GENETICS

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants,

discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

DISABLED, RECENTLY SEPARATED, OTHER PROTECTED, AND ARMED FORCES SERVICE MEDAL VETERANS The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits job discrimination and

discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job. If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance. EEOC 9/02 and OFCCP 8/08 Versions Useable With 11/09 Supplement

REV. 11/2009

REV. 04/2017

FED

REV. 04/2016

YOUR RIGHTS UNDER USERRA THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- you ensure that your employer receives advance written or verbal notice of your service;
- you have five years or less of cumulative service in the uniformed services while with that particular employer;
- you return to work or apply for reemployment in a timely manner after conclusion of service; and
- you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION If you:

- are a past or present member are obligated to serve in the of the uniformed service; uniformed service; have applied for membership in the uniformed service; or
- then an employer may not deny you
- initial employment; promotion; or
- any benefit of employment reemployment;
- retention in employment;
- because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

EEOC-P/E-1

HEALTH INSURANCE PROTECTION

- If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

ENFORCEMENT

- The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1-866-4-USA-DOL or visit its website at http://www.dol.gov/vets. An interactive online USERRA Advisor can be viewed at http://www.dol.gov/elaws/userra.htm.
- If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department
- of Justice or the Office of Special Counsel, as applicable, for representation.
- You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the internet at this address: http://www.dol.gov/vets/programs/userra/poster.htm. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying the text of this notice where they customarily place notices for employees.

U.S. Department of Labor • 1-866-487-2365 U.S. Department of Justice Office of Special Counsel Employer Support of the Guard and Reserve • 1-800-336-4590



receive up to \$2,000 a year towards their education for five The employer or insurer must also pay up to \$10,000 in burial expenses plus the cost of transporting the body if death occurs outside the community where the employee is to be

D. Rate of Compensation

As of July 1, 2021, weekly compensation is two-thirds of the employee's average weekly wage (including overtime hours at straight time pay) up to a maximum of \$934 per week. The minimum compensation is \$467 unless the employee's average weekly wage is less than \$467. In that instance, the amount of the employee's average weekly wage, less standard deductions, is paid as compensation. This rate is effective through June 30, 2022. The foregoing amounts are

restoration to suitable, substantial and gainful employment.

An injured employee desiring rehabilitation services should

contact the Division of Labor and Management for further

If an injury causes death, compensation is payable to the employee's spouse at the rate of compensation shown

in Section III-D for life or until remarriage. In the case of

remarriage, a sum equal to two years of compensation will be

paid to the spouse. Surviving children are eligible to receive

equal shares of Section III-D compensation if the spouse dies

or remarries. They must be under 18, under 22 if full-time

students, or incapable of self-support. If any of the children

are not in the custody of the spouse at the employee's death

(and the spouse is eligible for benefits), half the benefit goes

dependent child of the deceased employee from the date of

employee's death until the child is 18. If dependents attend

accredited South Dakota post-secondary schools, they can

to the spouse, the other half to the non-custodial children

In addition to the above-mentioned weekly benefits, an

additional \$50 per month must be paid to each legally

Immediately upon occurrence of an injury, or as soon as practicable, an injured employee (or a representative) shall give or cause to be given a written notice of injury to the employer. Written notice shall be provided no later than three business days after occurrence. No compensation will be paid unless written notice is given within three business days, unless reasonable excuse is made to the Department of Labor and Regulation. Therefore, the employee shall not be entitled to reimbursement of any medical practitioner's fee or any compensation which may have accrued prior to the time of giving notice, unless either of the following can be shown

The employer, or the employer's agent or representative, had knowledge of the injury or death The employer was given written notice after the date of the injury and the employee had good cause for failing to give written notice within the three business day period, which determination shall be liberally construed in favor of the employee

If an employee is entitled to benefits and does not receive them within 20 days, direct contact should be made to the insurance company

The employee must also inform his/her medical practitioner about which case management plan his employer uses.

V. Requirements of Employer A. Record-keeping

used to calculate temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, rehabilitation and death benefits. IV. Requirements of Employee

prior to treatment or as soon as reasonably possible after treatment has been provided. The employee must obtain written permission from the employer or insurer before changing health care practitioners. The employee may obtain a second opinion at his or her own expense. The employer also has the right to a second opinion. Services may also be regulated by the insurer's designated managed care plan. Travel, lodging and meal costs incurred as a result of securing necessary medical treatment are also compensable in certain instances. Generally such expenses will only be allowed if an

employee is required to travel to obtain medical treatment. The Division of Labor and Management should be contacted in regard to current rates.

B. Disability Benefits

State law provides for a series of benefits during the period of disability. Failure to make payment within 10 days of the date due may result in a penalty of 10 percent of the unpaid amount. The disability benefits are as follows:

Temporary total disability – An employee who cannot work because of work-related injury or disease is eligible for temporary total disability benefits. Generally this inability to work must be confirmed by a medical practitioner. Payment is not made for lost work time unless an employee is incapacitated for seven consecutive days. If the incapacity lasts for seven consecutive days or more, compensation is then computed from the date of injury. Payments continue until a medical practitioner releases the employee for return to work or determines that the employee's condition has reached a point of maximum improvement. The weekly rate for temporary disability payments is set forth in Section III-D.

Temporary partial disability – If a medical practitioner allows an employee who is still recovering from an injury or disease to return to part-time or modified work, and if the employee receives a bona fide job offer, and if the employee is receiving less than his or her usual earnings, the employee may be entitled to temporary partial disability benefits. These benefits are computed on the basis of one-half the difference between the average amount earned before the injury and the average amount the employee is earning or able to earn in some suitable employment after the injury. The amount of compensation allowed for temporary partial disability cannot exceed the maximum in Section III-D. The total compensation for earnings and workers' compensation may not be less than the amount received for temporary total disability, unless the employee refuses suitable employment. These benefits are payable until the employee is returned to full employment or

until maximum improvement **Permanent partial disability** – If an injury or illness results in impairment of certain members of the body, an employee may be entitled to permanent partial disability benefits. Benefits are computed by applying a determination of the employee's percentage of impairment to the number of weeks designated in the table for full disability of that body part. This number of weeks is then multiplied by the compensation rate as set forth in Section III-D. Payments are made on a weekly or bi-weekly basis unless a lump sum payment is allowed by the Division

Loss	Weeks
Thumb	50
First or index finger	35
Second finger	30
Third finger	20
Fourth or little finger	15
Great toe	30
Any other toe	10
Hand	150
Arm	200
Foot	125
Leg	160
Sight of eye	150
Hearing one ear	50
Hearing both ears	150

For permanent disability from back injury or others not specifically listed above, compensation is for that proportion of 312 weeks which is represented by the percentage that such permanent partial disability bears to the body as a whole

Permanent total disability – An employee who is totally and permanently disabled in terms of occupational capacity, or can no longer perform services of any kind, extent and quality for which a reasonably stable labor market exists, may be entitled to compensation at the weekly rate set forth in

Every employer coming under the provisions of this title shall keep a record of all injuries, fatal or otherwise, sustained by his employees in the course of their employment. The record shall be completed within seven days, not counting Sundays and legal holidays, after any employer has knowledge of the occurrence of an injury. The record shall be on a form approved by the Department of Labor and Regulation. The employer shall preserve the record for a period of at least four years from the date of injury.

B. Reporting

If an employer is authorized to self-insure, a written report shall be made to the Department of Labor and Regulation within seven days, not counting Sundays and legal holidays, after any employer coming under the provisions of this title has knowledge of the occurrence of an injury which requires medical treatment other than minor first aid or which incapacitates the employee for a period of at least seven calendar days

Failure to comply may result in a fine of \$100. The employer must also report the injury to its case management plan within 24 hours of the injury.

VI. Requirements of Insurer

The insurer is required to send a copy of the injury report to the Department of Labor and Regulation within 10 days. Failure to comply may result in a fine of \$100.

The insurer (or the employer if self-insured) shall make an investigation of the claim and notify the injured employee and the Department of Labor and Regulation in writing within 20 days if denying liability for the reported injury in whole or in part. This period may be extended up to 30 additional days if approved by the Department of Labor and Regulation. Failure to comply may result in a \$100 fine. The insurer or self-insurer who denies liability in whole or in part must state the reasons and notify the claimant of the right to a hearing.

If the claim is denied, the injured employee has two years from the date of notification from the insurer or self-insurer to file a Petition for Hearing with the Department of Labor and Regulation

VII. Mediation

If the employer/insurer and the injured employee do not agree as to compensability in whole or in part, either party may request the Department to conduct a mediation. Lawyers are not required.

VIII. Fraud

To report fraudulent collection of workers' compensation benefits contact the Department of Labor and Regulation, Division of Insurance

IX. Lack of Insurance or Self-Insurance

If an employer fails to provide workers' compensation coverage under the provisions of South Dakota law, an injured employee or the dependents of a deceased employee may proceed against the employer in an action at law to recover damages for the personal injury or death, or may elect to proceed against the employer in circuit court under the provisions of the workers' compensation law as if the employer had elected to operate thereunder. The measure of benefits for the employee shall be all medical expenses and twice the amount of disability or death compensation allowed under the law

X. Administration

Our state's workers' compensation law is administered by the Division of Labor and Management of the Department of Labor and Regulation. All work-related injuries and occupational diseases which require medical treatment. other than minor first aid, or which incapacitate the employee for a period of at least seven calendar days must be reported to the Division. In addition, the insurer or selfinsurer must file the following:

Calculation of Compensation (Form DLR-LM- 110) Monthly Payment Reports (Form DLR-LM-107) Payment for Permanent Partial Disability (Form DLR-LM-111)

Payment for Rehabilitation (Form DLR-LM-113) XI. More Information

Contact the Division of Labor and Management at: SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION **MISSOURI RIVER PLAZA** 123 W. MISSOURI AVE. PIERRE SD 57501 PHONE: 605.773.3681 Fax: 605.773.4211

Office Hours: Monday-Friday, 8 a.m. to 5 p.m. (Central time)

nployed or whose working hours are reduced ss than full time, if they are:	at 605.626.3179, Monday through Friday, 8 a.m. to 4:20 p.m. (Central Time). Speech and hearing- impaired applicants can call 800.877.1113.
Able to work,	You will need to provide the following information
Available for full-time work, and	for DLR to process your claim:
Meet certain eligibility requirements.	Full legal name
mployees who voluntarily quit without good	Social Security Number
ause, are discharged or suspended for misconduct, or refuse to accept suitable work may be denied	Driver's license number or State ID number
penefits.	 Employment history for the last 18 months
You may file an RA claim in the first week	 Authorization to work (if you are not a U.S. citizen or resident)

Employees working less than full time or who become totally unemployed, if available for work, should register for work at one of the Job Service offices listed below. View an office directory at www.sdjobs.org. Aberdeen Lake Andes N. Sioux City Sioux Falls Vermillion Yankton

 Brookings Madison Pierre Sisseton Watertown Huron Mitchell Rapid City Spearfish Winner

If you have questions about the status of your RA claim, you can call the Customer Service Center at 605.626.2452, email DLRRADivision@state.sd.us, or log in to your account and view the status under the Welcome message.

> SOUTH DAKOTA DEPT. OF LABOR & REGULATION **REEMPLOYMENT ASSISTANCE DIVISION** 420 S ROOSEVELT ST PO Box 4730 ABERDEEN, SD 57402-4730

> > REV. 05/2020

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IT'S THE LAW!

All workers have the right to:

- A safe workplace.
- Raise a safety or health concern with your employer or OSHA, or report a workrelated injury or illness, without being retaliated against.
- Receive information and training on job hazards, including all hazardous substances in your workplace.
- Request a confidential OSHA inspection of your workplace if you believe there are unsafe or unhealthy conditions. You have the right to have a representative contact OSHA on your behalf.
- Participate (or have your representative) participate) in an OSHA inspection and speak in private to the inspector.
- File a complaint with OSHA within 30 days (by phone, online or by mail) if you have been retaliated against for using your rights.
- See any OSHA citations issued to your employer.
- Request copies of your medical records, tests that measure hazards in the workplace, and the workplace injury and illness log.

This poster is available free from OSHA.

Contact OSHA. We can help.

Employers must:

- Provide employees a workplace free from recognized hazards. It is illegal to retaliate against an employee for using any of their rights under the law, including raising a health and safety concern with you or with OSHA, or reporting a work-related injury or illness.
- Comply with all applicable OSHA standards.
- Notify OSHA within 8 hours of a workplace fatality or within 24 hours of any work-related inpatient hospitalization, amputation, or loss of an eye.
- Provide required training to all workers in a language and vocabulary they can understand.
- Prominently display this poster in the workplace.
- Post OSHA citations at or near the place of the alleged violations.

On-Site Consultation services are available to small and medium-sized employers, without citation or penalty, through OSHA-supported consultation programs in every state.



1-800-321-OSHA (6742) • TTY 1-877-889-5627 • www.osha.gov

