



The following is a brief summary of Kansas state labor and employment laws. This summary is provided for general information only and is not intended as legal advice. Employers should consult legal counsel for more specific guidance.

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I. HIRING/APPLICANT LAWS

A. Employment at Will

Kansas is like most other jurisdictions that adhere to the principle of employment at will. At-will employment generally allows employers, in the absence of a contract or statute to the contrary, to discharge an employee at any time, for any reason, or for no reason at all. Employers should take efforts to preserve the at-will status of their employees in an employee handbook or individual employment agreement, by clearly stating that employment is at will and not for a particular term.

B. Pre-Employment Inquiries

During the job interview process, Kansas employers may only make “job-related inquiries” that are necessary to determine an applicant’s qualifications and eligibility for employment. An employer has a right to establish job-related requirements to select the best qualified applicant. Unless they are based on a bona fide occupational qualification, pre-employment inquiries that show a limitation, specification, or preference due to race, color, national origin, or ancestry, sex, disability, or age, violate the Kansas Act Against Discrimination (KAAD).

The Kansas Human Rights Commission (KHRC) has developed [a list of inquiries](http://www.khrc.net/hiring.html) (available at <http://www.khrc.net/hiring.html>) that may (and may not) be asked during the interview process:

	ACCEPTABLE INQUIRIES	INADVISABLE INQUIRIES
ADDRESS	inquiries into the applicant's address and/or the names of persons residing with the applicant (for compliance with nepotism policies)	any inquiries that might indicate the national origin or ethnicity of an applicant or the relationship of persons with whom the applicant lives
AGE, DATE OF BIRTH	inquiries into age, when age is a legal requirement	inquiries regarding age when age is not legally required
ANCESTRY, BIRTHPLACE, NATIONAL ORIGIN	none	inquiries about an applicant's lineage, national origin, descent, birthplace, or native language
ARRESTS	none	inquiries into the number or kinds of arrests
AVAILABILITY FOR WEEKEND/EVENING WORK	inquiries into weekend and evening availability if made for a valid business necessity and asked of all applicants	inquiries regarding religious observances
CITIZENSHIP	inquiries about an applicant's citizenship if U.S. citizenship is a legal requirement	inquiries that would indicate the birthplace of the applicant or the applicant's relatives

	ACCEPTABLE INQUIRIES	INADVISABLE INQUIRIES
CHILD CARE	inquiries into the applicant's ability to meet required work schedules	inquiries that would indicate marital status, child care arrangements, or pregnancy
CONVICTION RECORDS	inquiries into conviction records if job related	inquiries that are not substantially related to an applicant's ability to perform job duties
DISABILITY	inquiries into the ability of an applicant to perform the essential job functions of a position (It is permissible to ask for a demonstration or verbal description of how the applicant would perform essential job duties, if asked of all applicants.)	disability or health-related inquiries or medical examinations of an applicant until after an offer of employment has been made
PHOTOGRAPHS	requiring an applicant to be photographed for purposes of identification after the hiring selection is made	a requirement that a photograph of the applicants be supplied before hiring
EDUCATION, EXPERIENCE	inquiries into the applicant's education level or the academic, vocational, or professional schools that the applicant attended	inquiries that might indicate the national, racial, or religious affiliation of a school or dates of attendance or graduation
FINANCIAL STATUS, CREDIT RECORD	the use of credit reports when hiring new employees or evaluating employees for promotion, reassignment, and retention as long as the employer complies with the Fair Credit Reporting Act of 1997	Inquiries concerning financial stability and/or use of credit reports may be challenged as disparately impacting on and unlawfully discriminating against a legally protected group.
HEIGHT, WEIGHT	inquiry is permissible only when the employer can prove that height or weight is directly related to a job requirement	inquiries not related to applicants' abilities that are necessary to perform substantial job duties
LANGUAGES	inquiries into the languages an applicant reads, speaks, or writes if knowledge of a specific language is a valid business necessity	inquiries into an applicant's lineage, national origin, descent, birthplace, or native language and prohibitions against speaking a language other than English on the job unless business necessity has been established

	ACCEPTABLE INQUIRIES	INADVISABLE INQUIRIES
MARITAL OR FAMILY STATUS	inquiries into applicant's ability to meet required work schedules and/or the ability to travel	inquiries that would indicate an applicant's marital status, information about his or her children, child care, or pregnancy
MILITARY SERVICE	inquiries into education or experience gained that relates to specific job duties	inquiries regarding the type of discharge or any non-job-related inquiry
NAME	inquiries about other names under which an applicant has worked	inquiries that might indicate lineage, ancestry, national origin, descent, or marital status
NOTIFY IN CASE OF EMERGENCY	inquiries into the name and address of persons to be notified in case of an emergency after a hiring selection is made	inquiries into the names and addresses of relatives
ORGANIZATIONS	inquiries into organizations are permissible only if they contribute to the applicant's ability to perform the job	inquiries into the name of an organization that might reveal the religious, racial, or ethnic affiliation of the organization
REFERENCES	inquiries into the names and addresses of an applicant's professional and/or character references	a requirement that a specific individual provide a reference for the applicant
RELIGION	informing prospective employees of normal days and hours of work required for the position	inquiries that might indicate the applicant's religious practices or customs
SEX	inquiries are permissible only when the employer has proven that a bona fide occupational qualification exists and that all members of the affected class are unable to perform the job	inquiries regarding the gender of an applicant if an established bona fide occupational qualification does not exist
WORKERS' COMPENSATION	none	inquiries into past workers' compensation claims

C. Background Checks

As a general rule, an employer should not take action based on a prospective employee's actual convictions unless the conviction is substantially related to the applicant's ability to perform a specific job. Under Kansas law, an employer or prospective employer may access an individual's criminal history record information (CHRI), which is defined as all data initiated or collected by a

criminal justice agency and any supporting documentation. An arrest or the issuance of an arrest warrant is a reportable event that must be included in an individual's CHRI. [K.S.A. § 22-4705\(a\)\(1\)-\(2\)](#). However, the KHRC discourages employers from making inquiries regarding arrests. Federal law is also evolving in this area and may offer specific guidelines and protections to employees.

D. Background Checks for Specific Employees

Rules on conducting background checks for the following employees are covered in the specific provisions of Kansas law.

- Adult care home employees: [K.S.A. § 39-970](#)
- Home health agency employees: [K.S.A. § 65-5117](#)
- Bank employees: [K.S.A. § 9-1717](#)
- Child care employees: [K.S.A. § 65-516](#)

E. Credit Records

An employer should not inquire about an applicant's credit records unless the inquiry is job related. Information on an applicant's credit rating, charge accounts, and bankruptcies fall into this exclusion. The federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq., governs the use of "consumer reports" in whole or in part to evaluate an individual's eligibility for employment, promotion, reassignment, or retention as an employee. The FCRA has specific notice and reporting requirements associated with it.

F. Genetic Information

[K.S.A. § 44-1009\(a\)\(9\)](#)

Kansas law prohibits employers from subjecting employees or applicants for employment to any sort of genetic testing or screening. Employers are also prohibited from obtaining or using the genetic information of an employee or applicant to distinguish between, discriminate against, or restrict any right or benefit otherwise due or available to the individual.

G. Physical Examination

[K.A.R. §§ 21-34-3, -4, -8](#)

The KHRC prohibits an employer from making pre-employment inquiries or performing a medical examination to determine if an applicant is an individual with a disability or to determine the nature or severity of an applicant's disability. But an employer may ask whether an applicant is able to perform specific job-related functions. An employer may require a medical examination, but only after a job offer has been made to the applicant and before that applicant begins working. The employer may condition the offer of employment on the results of the examination only if all employees in the same job category are subjected to the same examination, regardless of disability. The KHRC has exempted tests to determine the illegal use of drugs from the definition of "medical examination." [K.A.R. § 21-34-8](#).

H. Employment Testing

K.A.R. §§ 21-30-3 to -5

When an employer uses employment tests to determine an individual's skills, ability, and education for a particular job, the test must not adversely affect classes protected by the Kansas Act Against Discrimination (KAAD) or the Kansas Age Discrimination in Employment Act (KADEA) (i.e., race, color, religion, national origin, sex, ancestry, age, or disability).

An employer must have evidence that the tests do not adversely affect members of a protected class. For example, if there are higher rejection rates for minorities, then the test may have an adverse impact on those in protected classes. However, the employer may continue to utilize the test if it has been validated as being based on unbiased job performance criteria, and the employer can demonstrate that alternatives to testing are unavailable.

I. Drug and Alcohol Testing

K.A.R. § 21-34-8
K.S.A. § 44-706(b)(2)

Kansas law does not prohibit an employer from requiring that applicants or employees submit to testing for illegal drug use or making employment decisions based on the results of a drug test. [K.A.R. § 21-34-8](#). However, there are limitations in terms of whether an employer's decision to discharge an employee based upon drug or alcohol testing will prevent the employee from receiving unemployment benefits. A termination based upon testing will prevent benefits if (1) the test was required by law, (2) the test was administered as a part of an employee assistance program or other drug or alcohol program in which the employee was participating as a condition of employment, (3) the test was conducted pursuant to a written policy, and the employee was aware of the policy, or (4) there was probable cause to believe the individual used, had possession of, or was impaired by alcohol or drugs while working. [K.S.A. § 44-706\(b\)\(2\)](#).

An employee's refusal to submit to a chemical or breath alcohol test is conclusive evidence of misconduct for purposes of a claim for unemployment benefits. Similarly, an employee's use of, or impairment caused by, drugs or alcohol while working is conclusive evidence of misconduct. An employee's possession of drugs or alcohol while working is also evidence of misconduct. [K.S.A. § 44-706\(b\)\(2\)](#).

J. New Hire Reporting

K.S.A. § 75-5743

Employers must report any employee who is a new hire, a re-hired employee, or employee returning to work to the Kansas Secretary of Labor. Within 20 days of the hire, re-hire, return to work, or first receipt of compensation, whichever is earlier, the employer must provide the following information to the state agency:

- the employee's name,
- the employee's address,
- the employee's social security number,
- the employer's nine digits federal identification number,
- the employer's name,
- the employer's address

There are a variety of ways to comply with the statute, including filing the information online.

II. EMPLOYMENT OF MINORS

A. Minimum Age K.S.A. §§ 38-601, -602, -614 to -622

The employment of minors under the age of 14 is generally prohibited in Kansas, except under limited circumstances. [K.S.A. § 38-601](#).

Under Kansas law, the following activities are not considered employment, provided these activities are not performed by a child during the normal school hours of the school district where the child resides:

- nonhazardous work performed by a child for a parent
- domestic service
- casual labor at a private home
- delivery or messenger work
- delivery or distribution of newspapers
- agricultural, horticultural, livestock, or dairying pursuits
- work in the entertainment industry, with some limited exceptions [K.S.A. §§ 38-614-622](#)

It is unlawful for minors between the ages of 14 and 18 to be employed in any occupation, trade, or business that is in any way dangerous or injurious to the life, health, safety, morals, or welfare of the minor. Additionally, no child may be employed in any occupation declared to be hazardous by the U.S. Secretary of Labor. [K.S.A. § 38-602](#).

B. Work Hours and Requirements for Minors K.S.A. § 38-603

Children under the age of 16 cannot work before 7:00 a.m. or after 10:00 p.m. unless the next day is not a school day. Additionally, minors cannot work over 8 hours in one day or more than 40 hours per week.

The work hours limitations do not apply to students working in school food-service preparation or employed as student-learners enrolled in a cooperative vocational training program. Note that in *private* school programs, student-learners must be employed under a written agreement with special provisions.

C. Work Permits and Required Notices K.S.A. §§ 38-604, -605

Employers must keep a work permit on file and accessible for all employees under the age of 16, unless the minors are enrolled in or attending any secondary school within the state. [K.S.A. § 38-604](#).

Every employer of children under the age of 16 must post a notice in a conspicuous place including the following information: (1) the maximum number of hours such children may work, (2) the beginning and ending hours of work shifts, and (3) the hours allowed for dinner or other meal breaks. [K.S.A. § 38-605](#).

D. Penalties

[K.S.A. § 38-612](#)

Any employer that employs a child in violation of Kansas law is guilty of a misdemeanor and can be fined \$25 to \$100 dollars or be imprisoned in county jail for 30 to 90 days.

III. KANSAS EQUAL EMPLOYMENT OPPORTUNITY LAWS

A. Overview of the Kansas Act Against Discrimination

[K.S.A. § 44-1001 et seq.](#)

The Kansas Act Against Discrimination (KAAD) applies to employers of four or more employees. Under the KAAD, it is unlawful for an employer, on the basis of race, religion, color, sex, disability, national origin, or ancestry to

- refuse to hire or employ an individual;
- bar or discharge an individual from employment; or
- otherwise discriminate against an individual in compensation or in terms, conditions, or privileges of employment

It is also unlawful for an employer to limit, segregate, classify, or make any distinction with regard to employees or to follow any employment procedure or practice that, in fact, results in discrimination, segregation, or separation without a valid business necessity. [K.S.A. § 44-1009\(a\)](#).

To succeed on a discrimination claim, the employee must show that his or her protected category was a motivating factor in the employer's decision to take adverse employment action against (or harass) the employee.

A Kansas employer can apply different standards of compensation and different terms, conditions, or privileges of employment—provided the differences or systems are not the result of an intention to discriminate and are not used to discriminate—pursuant to a bona fide seniority or merit system, a system measuring earnings by quantity or quality of production, or by another differentiating factor not based on a protected category. [K.S.A. §§ 44-1009, -1205](#). Likewise, an employer may administer and rely upon the results of any professionally developed ability test, so long as its administration of the test and the actions it takes based on the results of the test are not designed, intended, or used to discriminate because of a protected category. [K.A.R §21-30](#).

The KAAD does not require an employer to give preferential treatment to individuals belonging to a protected category because of an existing imbalance with respect to the total number or percentage of persons of any particular race, color, religion, national origin, sex, ancestry, age, or disability employed by any employer when compared to the total number or percentage of individuals in the protected category in any community, state, section, or other area, or in the

available workforce in those areas. However, an employer that fills vacancies to eliminate or reduce imbalance with respect to race, religion, color, sex, disability, national origin, or ancestry will not be committing an illegal employment practice.

B. Classes of Prohibited Discrimination

(1) Sex/Gender Discrimination

K.S.A. § 44-1009

K.A.R. § 21-32

Unless sex is a bona fide occupational qualification, which rarely occurs, employers must treat male and female employees and applicants equally. In addition, an employer may not refuse to hire a particular male or female because of stereotypes based on the applicant's gender.

Employers are allowed to make pre-employment inquiries about an applicant's gender if it is a good faith inquiry and for a nondiscriminatory purpose. An employer must not make any sex-based distinction in the terms and conditions of employment, wages, or benefits prohibited.

The KAAD also prohibits pregnancy discrimination. Pregnancy should be treated like any other temporary disability.

(2) Race Discrimination

K.S.A. § 44-1009

The KAAD prohibits discrimination based upon an individual's race and also prohibits any unfair treatment such as unlawful harassment, as well as adverse employment actions.

(3) Harassment

K.S.A. § 44-1009

The KAAD also prohibits harassment. Sexual harassment claims may emerge from unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature. The harassment must be unwelcomed and must be based upon a protected category. In addition, the harassment must be sufficiently severe or pervasive as to affect the terms and conditions of employment.

Under federal law, an employer is vicariously liable for harassment by a supervisory-level employee,¹ an employee viewed as the employer's alter ego,² or an employee whom the victim reasonably believed was a supervisor.³ A Kansas employer may be held directly liable under a negligence theory when the employer knew or should have known harassment was occurring, but failed to stop it.⁴ An employer may also be liable for customer harassment, based on negligence, where the employer is on notice of a hostile work environment created by the customer's sexual harassment, but fails to prevent or remedy the harassment.⁵

¹ *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 757 (1998).

² *Id.* at 758; see also *Mallison-Montague v. Pocrnick*, 224 F.3d 1224 (10th Cir. 2000).

³ *Ellerth*, 524 U.S. 759.

⁴ *Baty v. Williamette Industries, Inc.*, 172 F.3d 1232 (10th Cir. 1999); *Lintz v. American General Finance, Inc.*, 50 F. Supp. 2d 1074 (D. Kan. 1999).

⁵ *Locklard v. Pizza Hut, Inc.*, 162 F.3d 1062 (10th Cir. 1998).

(4) National Origin Discrimination

**K.S.A. § 44-1009
K.A.R. § 21-31**

The KAAD prohibits discrimination against employees or applicants based on their national origin or ancestry. Employers may be found to violate the law if they test an applicant in English with knowledge that the applicant's first language is not English and for a position in which English is not an essential job qualification. In addition, unlawful discrimination may include denying equal opportunity to persons married to or associated with persons of a specific national origin.

(5) Disability Discrimination

**K.S.A. §§ 44-1002, -1009
K.A.R. §§ 21-32-6(b), 21-34**

Employers may not discriminate against a disabled applicant or employee. A disabled individual is defined by Kansas law as an individual with either a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having an impairment.

The KAAD applies to some temporary disabilities such as pregnancy and related complications. [K.A.R. § 21-32-6\(b\)](#).

Like the Americans with Disabilities Act (ADA), the KAAD requires employers to provide reasonable accommodations for employees with disabilities. These reasonable accommodations may include making facilities readily accessible, job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, and the provision of readers or interpreters. A good faith attempt should be made to accommodate disabled employees, provided the accommodations do not cause an undue hardship to the employer.

Employees who are impaired due to their use of alcohol or drugs are not entitled to claim a "disability" under the KAAD. However, employees may qualify as disabled if they are in or have successfully completed a supervised, drug rehabilitation program and are no longer using drugs or if they are erroneously regarded as currently using or being addicted to drugs.

Finally, Kansas law prohibits discrimination against individuals with HIV infection, acquired immunodeficiency syndrome (AIDS), and AIDS-related complex. [K.S.A. § 65-6001, et seq.](#) Employers must maintain the confidentiality of records concerning an individual's HIV test result or infection status.

(6) Religious Discrimination

**K.S.A. § 44-1009
K.A.R. §§ 21-33**

Kansas law prohibits employers from discriminating against an employee or prospective employee based on his or her religious beliefs. A Kansas employer is obligated to make reasonable

accommodations of employees' and prospective employees' religious needs where the accommodations can be made without undue hardship to the business.

(7) Age Discrimination

**K.S.A. §§ 44-1111, et seq.
K.A.R. §§ 21-80**

The Kansas Age Discrimination in Employment Act (KADEA) prohibits discrimination against employees or applicants age 40 and over. Under the KADEA employers must not,

- refuse to hire, employ, license, or train individuals who are 40 years old or older,
- discriminate against employees aged 40 years old or older with regard to wages, promotions, or other privileges, terms, or conditions of employment;
- discharge an employee who is 40 years old or older based on the individual's age; or
- make improper statements in job postings, applications, or other publications suggesting any limitation, specification, or discrimination against individuals aged 40 years old or older. [K.S.A. § 44-1113](#).

It is not discriminatory to act on the basis of an individual's age:

- if age is a bona fide occupational qualification;
- to comply with the terms of a bona fide seniority system or benefit plan; or
- to comply with the provisions of a retirement, pension or other benefit plan allowed by state or federal law. [K.S.A. § 44-1113](#).

There is a limited exception for employers that require mandatory retirement for certain employees at age 65.

Employers may institute a seniority system, so long as the intent of the system is not to discriminate.

(8) Sexual Orientation

While neither Kansas nor federal law considers sexual orientation to be a protected class, the cities of Lawrence, Manhattan, Topeka, and Roeland Park, Kansas, recently enacted a civil rights ordinance prohibiting sexual orientation discrimination, including gender identity. The County of Shawnee prohibits sexual orientation discrimination as to *public* employment. Other Kansas towns are considering similar legislation.

C. Retaliation/Whistleblowing

(1) KAAD Retaliation KADEA Retaliation

**K.S.A. § 44-1009(a)(4)
K.S.A. § 44-1113(a)(5)**

An employer may not retaliate or discriminate in any way against any person because the person opposed a practice prohibited by the KAAD, the KADEA, or because such person filed a

complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing.

(2) Workers' Compensation Retaliation

Kansas law prohibits discharging or discriminating against an employee because he or she exercised his or her rights under the workers' compensation law.

(3) Whistleblower and Other Public Policy Protections

Kansas recognizes a common law cause of action against an employer for terminations that are contrary to Kansas public policy, including terminations,

- for refusing to commit a crime or act contrary to public policy;
- for reporting wrongdoing or violations of law or public policy by employers or fellow employees;
- when the employee has an employment contract or where another statute expressly provides the employee with a remedy for the wrongful discharge (i.e., laws relating to workers' compensation, jury service, voting, reporting safety violations);
- for responding to a subpoena or participating in a deposition for a civil lawsuit; or
- for exercising certain statutory or constitutional rights.

D. Remedies

K.S.A. §§ 44-1005, -1010, -1011, -1021(a)
K.A.R. § 21-41-4

An aggrieved person bringing a complaint of illegal discrimination under the KAAD or the KADEA must file a complaint (or "charge") with the Kansas Human Rights Commission (KHRC) within six months of the alleged discrimination or the last alleged discriminatory act, if there are allegations of continuous violations. [K.S.A. § 44-1005\(i\)](#).

The KHRC is the regulatory agency that sets out rules and regulations on how to carry out Kansas anti-discrimination laws. Once a complaint is filed, the KHRC investigates the complaint to determine if the complaint has probable cause. If probable cause exists, the KHRC then initiates its own proceedings to address and eliminate the discrimination alleged in the complaint by conference and conciliation, where the parties endeavor to reach an agreement to eradicate the complained of discrimination. If the parties do not reach an agreement, a formal hearing is conducted, including a prehearing conference, and full discovery is allowed. After the hearing, any dissatisfied party can file a petition for reconsideration with the KHRC. If a party is still dissatisfied after receiving the Commission's decision on reconsideration, that party can file a petition for judicial review of the Commission's action in district court. [K.S.A. § 44-1005](#).

If the Commission issues a determination that no probable cause exists to support the complainant's allegations, the complainant can then file an independent action in district court.⁶ An independent action can only be filed after the complainant has exhausted all administrative remedies.⁷

While the length of time a complainant has to file an independent action is not set out in Kansas statutes, Kansas case law states that the statute of limitation is three years from the complainant's notice of the adverse employment action.⁸ While the matter is pending before the KHRC, the statute of limitations is suspended until the administrative proceeding has concluded.⁹

Under the KAAD, emotional distress damages are capped at \$2,000. [K.S.A. § 44-1005\(k\)](#).

E. KAAD and KADEA Posting Requirements [K.S.A. §§ 44-1012, -1114](#)
[K.A.R. § 21-44-3](#)

Every Kansas employer is required to post the KHRC's equal employment poster in a conspicuous place, such as a break room or other place where employee notices are posted, and where employees will have access to it.

F. KAAD Record-Keeping [K.A.R. §§ 21-42-5, -44-4](#)

Once a complaint of discrimination is filed and the employer is notified, the employer must preserve all personnel records relevant to the complaint until the complaint's final disposition (i.e., once all litigation is resolved). [K.A.R. § 21-42-5](#).

The KHRC recommends that any identification of a person's protected status, which is kept in order to comply with various reporting requirements, be maintained separately from the individual's personnel file.

IV. LEAVE LAWS

A. Jury Duty [K.S.A. § 43-173](#)

Employers are not required to pay employees for wages lost due to jury service. An employer may not discharge or threaten to discharge an employee because of a jury summons or service. An employee discharged because of jury duty may bring a civil action for recovery of lost wages, other damages, and reinstatement. If the employee prevails, he or she may receive reasonable attorneys' fees.

⁶ *Van Scoyk v. St. Mary's Assumption Parochial School*, 580 P.2d 1315 (Kan. 1978).

⁷ *Id.*

⁸ *Wagher v. Guy's Foods, Inc.*, 885 P.2d 1197, 1204 (Kan. 1994).

⁹ *Id.* at 1206.

B. Military Service Rights

K.S.A. §§ 48-222, -517

Under Kansas law it is a misdemeanor for any employer to not allow its employees who are members of the Kansas National Guard to attend drill or annual muster or perform active service when ordered by the commander in chief. An employer that refuses, discharges an employee from service, or in any way punishes an employee for being absent in the performance of military duty when so ordered by competent authority can be punished with a fine of \$5 to \$50 for each offense. [K.S.A. § 48-222](#).

Employees called to active duty by the state (whether by the Kansas National Guard, the Kansas Air National Guard, the Kansas State Guard, or any other Kansas military force), who gave notice to their employer of the call-up, are entitled to reinstatement upon satisfactory performance of military duty and release from such duty. Reinstatement means returning to the same position of employment except for temporary positions. The employee must report to work within 72 hours of release from duty or recovery from disease or injury resulting from the duty. If the employee is no longer qualified to perform the duties of the position because of disability sustained while on duty, but is qualified to perform another job offered by the employer, the employee shall be reemployed in a position that will provide like seniority, status, and pay or the nearest approximation consistent with the circumstances. An individual restored to employment after military service is protected from discharge without cause, for one year after returning to the position. [K.S.A. § 48-517](#).

C. Emergency Responders Leave

K.S.A. § 44-131

Employers are prohibited from discharging any employee because the employee performs duties as a volunteer firefighter, volunteer certified emergency medical services attendant, volunteer reserve law enforcement officer, or volunteer part-time law enforcement officer. This statute does not apply to employees who are employed as full-time firefighters or law enforcement officers.

D. Pregnancy and Maternity Leave

K.A.R. § 21-32-6

Kansas's pregnancy and maternity leave rules apply to employers with four or more employees. Employees who are disabled by reason of pregnancy, miscarriage, abortion, childbirth, or recovery are eligible for temporary disability benefits under the employer's health or temporary disability insurance or paid sick leave plan. Female employees are entitled to a leave of absence following childbirth for a reasonable period of time.

Female employees returning from giving birth, who notify their employers of their intent to return to work within a reasonable time, must be reinstated to their original job or to a position of like status and pay without loss of service, credits, seniority, or other benefits.

E. Voting Leave

K.S.A. § 25-418

Employees entitled to vote at any election in the state are allowed up to two consecutive hours to vote between the time of the opening and closing of the polls. Employers may specify the

time during the day which the employee may take leave, except such specified time shall not include any time during the regular lunch period. Wages may not be deducted if the employee uses the voting leave right.

Under Kansas law, obstruction of an employee's voting privilege is a Class A misdemeanor. "Obstruction of voting privilege" is defined as (a) intentionally obstructing an employee in exercise of his or her voting privilege, or (b) imposing a penalty upon an employee exercising his or her voting privilege under this section.

F. Crime Victim Leave

K.S.A. § 44-1132

Employers cannot discharge, discriminate, or retaliate against employees who, as victims of domestic violence or sexual assault, take time off from work to,

- obtain or attempt to obtain relief to help ensure the health, safety, or welfare of themselves or their children;
- seek medical attention from injuries caused by domestic violence or sexual assault;
- obtain services from a domestic violence shelter, domestic violence program, or rape crisis center; or
- make court appearances in the aftermath of domestic violence or sexual assault.

Unless otherwise infeasible, the employee must give the employer reasonable advance notice of the employee's intent to take time off. Employees can use any accrued paid leave or if paid leave is unavailable, unpaid leave of up to eight days per calendar year. Employers cannot take any action against an employee when unscheduled absences occur if, within 48 hours after the absences begin, the employee provides documentation establishing he or she was the victim of domestic violence or sexual assault.

G. Breastfeeding in the Workplace

K.S.A. § 65-1,248

Kansas law provides that a mother may not be prohibited from breastfeeding her child in any location, public or private, where the mother and child are authorized to be present.

The Patient Protection and Affordable Care Act (or "Affordable Care Act," as it is commonly called) amended section 7 of the Fair Labor Standards Act (FLSA) to require employers to provide reasonable break time for an employee to express breast milk for her nursing child, for one year after the child's birth, each time the employee needs to express the milk. Employers are also required to provide a place for employees to express breast milk other than a bathroom, shielded from view, and free from intrusion from coworkers and the public. The [U.S. Department of Labor's website](http://www.dol.gov/whd/nursingmothers/) provides further information on this requirement at <http://www.dol.gov/whd/nursingmothers/>.

V. WAGE AND HOUR LAWS

A. Minimum Wage

K.S.A. § 44-1203

The Kansas minimum wage is \$7.25 per hour and is the same rate as the federal minimum wage. The Kansas minimum wage statute only applies to employees who are *not* covered by the FLSA. Tips and gratuities may be credited toward the minimum wage, if the tips and gratuities have customarily constituted part of the compensation of the employee and if the employee actually receives and retains the tips and gratuities. The base wage for tipped employees is \$2.13 per hour.

B. Payment of Wages

(1) Timing

K.S.A. §§ 44-314, -315, -342

All employers doing business in Kansas must pay employees at least once per calendar month. A worker who is fired or quits must be paid, either through regular pay channels or by mail, by the next regular pay day on which he or she would have been paid if still employed. If a commissioned salesperson is fired or quits, the employer must pay the salesperson's commissions earned through the last day of employment no later than 30 days after the last day of the contractual relationship.

(2) Underpayment

K.S.A. § 44-315

Should an employer willfully pay any employee less wages than those to which he is entitled, the employer will be liable to the employee for the full wage rate amount plus a penalty of (1) one percent of the unpaid wages for each day, except Sundays and legal holidays, upon which such failure continues after the eighth day upon which payment is required, or (2) an amount equal to 100 percent of the unpaid wages, whichever is less.

(3) Wage Discrimination Based on Sex

K.S.A. § 44-1205

An employer who employs both men and women cannot discriminate between employees on the basis of sex by paying employees of one sex at a rate less than the rate paid to the other sex for the same work, the performance of which requires equal skill, effort, and responsibility, and which is performed under similar working conditions except where such payment is made pursuant to (a) a seniority system, (b) a merit system, (c) a system that measures earnings by quantity or quality of production, or (d) a differential based on a factor other than sex.

C. Proper Wage Deductions

K.S.A. § 44-319

A Kansas employer cannot withhold, deduct, or divert any portion of an employee's wages unless,

- (1) the employer is required or empowered to do so by state or federal law;
- (2) the deductions are for medical, surgical, or hospital care or service, without financial

- benefit to the employer and are openly, clearly, and in due course recorded in the employer's books;
- (3) the employer has a signed authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee; or
 - (4) the deductions are for contributions attributable to automatic enrollment in a retirement plan established by the employer.

If the employer and employee have a signed agreement stating so, the employer may also withhold, deduct, or divert any portion of the employee's wage to,

- (1) allow the employee to repay a loan or advance, which the employer made to the employee within the scope and the course of employment;
- (2) allow for recovery of overpayment of payroll; or
- (3) compensate the employer for the replacement or unpaid balance of the cost of the employer's goods or uniforms purchased by the employee.

If an employer has provided written notice and explanation to the employee, the employer may withhold, deduct, or divert any portion of the employee's wage to:

- (1) recover the employer's property that was provided to the employee while in the course of the employer's business (and that may include tools of the trade or profession, personal safety equipment, computers, electronic devices, mobile phones, proprietary information such as client or customer lists and intellectual property, security information, keys or access cards, or materials) until the property is returned by the employee to the employer. Once the employee has returned the property, the employer shall relinquish the withheld wages.
- (2) allow the employee to repay a loan or advance, which the employer made to the employee within the scope and course of employment.
- (3) allow for recovery of overpayment of payroll.
- (4) compensate the employer for the replacement or unpaid balance of the cost of the employer's goods or uniforms purchased by the employee.

Employers may not withhold any amounts under these provisions that would cause the employee's wages to be less than minimum wage.

The employer also may withhold amounts authorized in writing by the employee to be contributed by the employee to charitable organizations or labor organizations where not otherwise prohibited by law.

D. Garnishment

K.S.A. §§ 23-36,502, 60-2310, 60-2311

Kansas law contains specific provisions for the garnishment of employee wages. The maximum garnishment for any workweek (except for support-related garnishments) may not exceed the lowest of (1) 25 percent of the garnished employee's weekly disposable earnings, (2) the amount by which the garnished employee's weekly disposable earnings exceed 30 times the federal minimum wage, or (3) the amount of the plaintiff's claim in the order for garnishment.

If the garnishment is related to an order of support for another individual (including spousal and child support payments), the maximum garnishment for any workweek may not exceed (1) 50 percent of the garnished employee's weekly disposable earnings if the garnished employee is supporting a spouse or dependent child (in addition to the spouse or child whose benefit the garnishment is for) or (2) 60 percent of the garnished employee's disposable earnings if the individual is not supporting a spouse or dependent child.

Child support has priority over all other legal obligations. The Uniform Interstate Family Support Act (UIFSA) is applicable to Kansas employers. Therefore, an income-withholding order issued in another state can be sent to a Kansas employer without filing a petition or registering an order with a Kansas court. Once an out-of-state order is received, the employer must immediately provide a copy to the employee, the order must be treated as if issued by a Kansas court, and the employer must withhold and distribute the funds as directed.

Employers may not retaliate against employees because they have pending garnishments.

E. Overtime Payment

[K.S.A. § 44-1204](#)

Kansas employers must pay non-exempt employees who are *not* covered by the FLSA overtime compensation, equal to one-and-one-half times their regular pay, for hours worked in excess of 46 per week.

Employers that are covered by the FLSA and are not subject to Kansas overtime law include those,

- engaged in interstate commerce or the production of goods for interstate commerce or an activity that is closely related and directly essential to the production of this type of goods; or
- with annual dollar volume of sales or receipts of \$500,000 or more.

The following is a partial list of employees who, according to the [U.S. Department of Labor](#), are exempt from the federal minimum wage and overtime requirement:

- executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and certain skilled computer professionals (as defined in the U.S. Department of Labor's regulations)
- employees of certain seasonal amusement or recreational establishments;
- employees of certain small newspapers and switchboard operators of small telephone companies
- seamen employed on foreign vessels
- employees engaged in fishing operations
- employees engaged in newspaper delivery
- farm workers employed on small farms (i.e., those that used less than five hundred "man-days" of farm labor in any calendar quarter of the preceding calendar year)

- casual babysitters and persons employed as companions to the elderly or infirm

F. Holidays

K.S.A. § 35-107

There are 10 legally recognized bank and school holidays in Kansas, all of which are also federal holidays:

New Year's Day	January 1
Martin Luther King's Birthday	3rd Monday in January
Washington's Birthday/Presidents' Day	3rd Monday in February
Memorial Day	Final Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Columbus Day	2nd Monday in October
Veterans' Day	November 11
Thanksgiving Day	4th Thursday in November
Christmas Day	December 25

Private employers are not required by either state or federal law to recognize holidays as either paid or unpaid time off from work.

G. Record-Keeping

K.S.A. § 44-1209

For a period of three years and at the location where any employee is employed, an employer must make and retain a record of the name and occupation of each employee, the rate of pay and the amount paid each pay period to each employee, and the hours worked each day and each workweek by each employee. These records must be available for inspection by the Secretary of Human Resources.

H. Misclassification of Independent Contractors

K.S.A. § 44-766, -768

No person may knowingly and intentionally misclassify an employee as an independent contractor for the sole or primary purpose of avoiding either state income tax withholding and reporting requirements or state unemployment insurance contributions reporting requirements.

To determine if a worker has been misclassified, the secretary will first determine if the business has a reasonable basis for classifying the worker as an independent contractor. A business has a reasonable basis if it relied on any of the following:

- a judicial decision regarding employment classification matters rendered by a Kansas court;
- a previously received ruling from the Internal Revenue Service (IRS), the Kansas Department of Revenue, or the U.S. Department of Labor validating the business's classification of workers;
- a previous audit by the IRS, Kansas Department of Revenue, or the U.S. Department of Labor at a time when the business classified workers similarly situated to the workers

currently in question and the audit did not result in reclassification of the similarly situated workers; or

- application of worker classifications customary among a significant segment of the business' industry. [K.S.A. § 44-768](#).

If a reasonable basis is found for the classification of a worker, then the classification shall be deemed valid and the business may not be subjected to penalties, interest, or recovery for back taxes.

VI. ORGANIZED LABOR

[Ks. Const. Art. 15, § 12](#)
[K.S.A. § 44-803](#)

Kansas employees have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. Kansas employees also have the right to not participate in any or all such activities.

Kansas is a right-to-work state. The Kansas constitution prohibits employers from entering into any agreement that precludes any person from getting or keeping a job based on membership or non-membership in a labor organization.

VII. NONCOMPETITION AGREEMENTS AND TRADE SECRETS

A noncompete agreement is any agreement in which an employee agrees not to participate in certain competitive activities, typically for a specific period of time and in a specific geographic area. Kansas law allows employers to enforce noncompete agreements that protect “legally permissible business interests.” An enforceable noncompete must be (or must be part of) an otherwise valid and enforceable contract. The remedies for violation of a non-compete agreement include monetary damages, an injunction to enforce the employee’s compliance, or both.

Consideration is required to support a noncompete agreement. The promise to hire and pay a salary is generally sufficient consideration to support a covenant not to compete.

Noncompete agreements are strictly construed against the employer and must be reasonable. An employer can only enforce a noncompete agreement to the extent it has a reasonable restriction of time and geographic area, and courts consider these factors on a case-by-case basis to determine the appropriate scope. Noncompete agreements with a variety of restrictions involving different combinations of time and area have been upheld by Kansas courts.

A nondisclosure agreement must relate to a protectable interest of the employer and may be included in a noncompete agreement. This includes restrictions on customer contacts, accounts and goodwill, and trade secrets or other commercially sensitive confidential information relating to an employer’s business practices. Publicly available information or industry general knowledge is *not* considered a trade secret.

VIII. WORKPLACE SAFETY LAWS

A. Overview of Workplace Safety Provisions

The Occupational Safety and Health Administration (OSHA) regulates safety and health in the workplace. Kansas does not have a statute specifically regulating workplace health and safety. But Kansas employers owe a common law duty to their employees to use reasonable care to provide a safe workplace. An employer also has a duty to protect employees from avoidable perils and ensure that suitable instrumentalities are properly used.

Employees who become disabled as a result of diseases acquired during the course of their employment shall be compensated in accordance with the workers' compensation law. [K.S.A. §§ 44-5a01, et seq.](#)

B. Smoking

[K.S.A. § 21-6110](#)

Kansas employers whose places of employment are an enclosed area must provide a smoke-free workplace for all employees. Employers must have and enforce a written smoking policy that prohibits smoking without exception in all areas of the place of employment. Such policy needs to be communicated to all current employees within one week of its adoption and to all new employees upon hiring. If a current or prospective employee requests a written copy of the policy, the employer must provide it.

Smoking is prohibited in the following areas:

- public places;
- taxicabs and limousines;
- restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multiple-residential facilities;
- restrooms, lobbies, and other common areas in hotels and motels, and in at least 80 percent of the sleeping quarters within a hotel or motel that may be rented to guests;
- access points of all buildings and facilities, including outdoor areas, with certain limited exceptions; and
- any place of employment.

Some exceptions include the gaming floor of a gaming facility; designated smoking areas or rooms within hotels, motels, adult care homes, or other medical facilities; tobacco shops; and private clubs.

C. Workers' Compensation Law

[K.S.A. § 44-501, et seq.](#)

A notice of workers' compensation rights is required to be posted in a conspicuous place by employers. Every employer subject to Kansas's workers' compensation law is liable to compensate employees for personal injury or death by accident arising out of and in the course of employment. No compensation is allowed for deliberately self-inflicted injury.

Disclosure of workers' compensation records is generally prohibited, with certain limited exceptions. An employer may disclose an individual's medical records to a prospective employer if (1) a conditional offer of employment has been made, and (2) the request for records includes the individual's signed release, identifies the job conditionally offered by the employer, and is submitted in writing either by mail or electronic means. [K.S.A. § 44-550b](#).

Other specifics of Kansas's workers' compensation law are beyond the scope of this desk reference.

D. Firearms in the Workplace

[K.S.A. § 75-7c10](#)

Employers may create and implement workplace policies restricting or prohibiting employees from carrying concealed handguns onto the employers' premises or while performing their job duties. Employers cannot prohibit employees from keeping handguns in their private vehicles, even when those vehicles are parked in employer parking lots.

Private property owners may prohibit individuals from carrying concealed handguns on their property by posting signs giving notice that such conduct is prohibited.

IX. SEPARATION/POST-EMPLOYMENT LAWS

A. Unemployment Compensation

[K.S.A. § 44-701, et seq.](#)

Kansas employees are entitled to claim unemployment benefits upon termination of employment, unless they are discharged for "misconduct" connected with the performance of their work or resigned voluntarily without good cause attributable to their work. A notice of employees' right to unemployment compensation must be posted in the workplace.

B. Work Share Program

[K.S.A. § 44-757](#)

Kansas, like many states, has a work share program available to employers impacted by difficult financial times to avoid layoffs and assist in retaining employees. To qualify, the available work must be divided among a group of employees. An affected employee's hours must be reduced by at least 20 percent, but not more than 40 percent. The program must apply to least 10 percent of the employees in the affected unit, and the employer must certify that the work share program is in lieu of temporary layoffs in the affected unit. Workers must qualify for regular unemployment benefits to receive shared work benefits and the Kansas Department of Labor must approve the employer's shared work plan. Benefits received are equal to the amount an employee's hours were reduced.

C. Service Letters

[K.S.A. § 44-808](#)

Employers are required by Kansas law to provide a service letter to a discharged employee upon request. The service letter must state the employee's length of employment, occupational classification, and wage rate.

D. Inquiries From Prospective Employers

K.S.A. § 44-119a

An employer or the employer's designee who discloses information about a current or former employee to a prospective employer of the employee has qualified immunity from civil liability.

The employer has absolute immunity from civil liability if the disclosure is limited to (1) dates of employment, (2) pay level, (3) job description and duties, and (4) wage history.

An employer who responds in writing to a prospective employer's written request for information about a former or current employee has absolute immunity from civil liability if the disclosure is limited to,

- written employee evaluations that were conducted prior to the employee's separation from the employer and to which an employee shall be given a copy upon request; and
- whether the employee was voluntarily or involuntarily released from service and the reasons for the separation.

Kansas Statutes:

Background Checks for Specific Employees

Adult Care Home Employees

K.S.A. § 39-970

Home Health Agency Employees

K.S.A. § 65-5117

Bank Employees

K.S.A. § 9-1717

Child Care Employees

K.S.A. § 65-516

Credit Records

Credit Reporting Act 15 U.S.C. § 1681, et seq.

Genetic Information

K.S.A. § 44-1009(a)(9)

Physical Examination

K.A.R. §§ 21-34-3, -4, -8

Employment Testing

K.A.R. §§ 21-30-3 to -5

Drug and Alcohol Testing

K.A.R. § 21-34-8, K.S.A. § 44-706(b)(2)

New Hire Reporting

K.S.A. § 75-5743

Employment of Minors

K.S.A. §§ 38-601, -602, -614 to -622

Work Hours and Requirements for Minors

K.S.A. § 38-603

Work Permits and Required Notices

K.S.A. §§ 38-604, -605

Penalties

K.S.A. § 38-612

Kansas Act Against Discrimination

K.S.A. §§ 44-1001 et seq.

Classes of Prohibited Discrimination

Sex/Gender Discrimination

K.S.A. § 44-1009, K.A.R. § 21-32

Race Discrimination

K.S.A. § 44-1009

National Origin Discrimination

K.S.A. § 44-1009, K.A.R. § 21-31

Disability Discrimination

K.S.A. §§ 44-1002, -1009,

K.A.R. § 21-32-6(b), K.A.R. § 21-34

Religious Discrimination

K.S.A. § 44-1009, K.A.R. § 21-33

Age Discrimination

K.S.A. §§ 44-1111, et seq., K.A.R. §21-80

Retaliation/Whistleblowing

KAAD Retaliation

K.S.A. § 44-1009(a)(4)

KADEA Retaliation

K.S.A. § 44-1113(a)(5)

KAAD & KADEA Remedies

K.S.A. §§ 44-1005; -1010, -1011, -1021(a),

K.A.R. 21-41-4

KAAD & KADEA Posting Requirements

K.S.A. §§ 44-1012, -1114, K.A.R. § 21-44-3

KAAD Record-keeping

K.A.R. §§ 21-42-5, -44-4

Leave Laws

Jury Duty

K.S.A. § 43-173

Military Service Rights

K.S.A. §§ 48-222, -517

Emergency Responders Leave

K.S.A. § 44-131

Pregnancy and Maternity Leave

K.S.A. § 21-32-6

Voting Leave

K.S.A. § 25-418

Crime Victim Leave

K.S.A. § 44-1132

Breastfeeding in the Workplace

K.S.A. § 65-1,248

Wage and Hour Laws

Minimum Wage

K.S.A. § 44-1203

Payment of Wages

Timing

K.S.A. §§ 44-314, -315, -342

Underpayment

K.S.A. § 44-315

Wage Discrimination Based on Sex	K.S.A. § 44-1205
Proper Wage Deductions	K.S.A. § 44-319
Garnishment	K.S.A. §§ 23-9,502, 60-2310, 60-2311
Overtime Payment	K.S.A. § 44-1204
Record-keeping	K.S.A. § 44-1209
Misclassification of Independent Contractors	K.S.A. §§ 44-766, -768
Labor Organizations	Ks. Const. Art. 15, § 12; K.S.A. § 44-803
Workplace Safety Provisions	K.S.A. §§ 44-5a01, et seq.
Smoking	K.S.A. § 21-6110
Workers' Compensation Law	K.S.A. §§ 44-501, et seq., 44-550b
Firearms in the Workplace	K.S.A. § 75-7c10
Separation/Post-employment Laws	
Unemployment Compensation	K.S.A. § 44-701, et seq.
Work Share Program	K.S.A. § 44-757
Service Letters	K.S.A. § 44-808
Inquiries From Prospective Employers	K.S.A. § 44-119a

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