

Guide to USVI Employment Law



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Below is a brief summary of certain key employment laws and provisions applicable in the U.S. Virgin Islands.

I. Local Employment Laws in the U.S. Virgin Islands (USVI)

The Commissioner of Labor in the USVI's Department of Labor administers the provisions of the Virgin Islands Code relating to fair labor standards and labor relations. Provisions relate to minimum wages, maximum hours, overtime rates, rights of employees, unfair labor practices, representatives of employees, elections, and penalties.

A. Hiring

The Virgin Islands Discrimination in Employment statute prohibits discrimination in employment on the basis of race, sex, age, religion, color or ancestry.¹ Discrimination in employment on the basis of race, creed, color or national origin is also prohibited under the Virgin Islands Civil Rights Statute.²

B. Registration of Job Vacancies

Employers must notify the Employment Security Agency, Virgin Islands Department of Labor of its intent to fill an existing position, now vacant or soon to become vacant, or a new position. Notices of vacancies must include the title of the position, if any, the proposed salary, any required qualifications, and the general duties of the position.³

C. Termination of Employees

Employees who have been employed with an employer for 6 calendar months or more are protected by the Virgin Islands Wrongful Discharge Act (the "WDA"). To be considered an

¹ 24 VIC § 451, et seq.

² 10 VIC. § 1 et seq.

³ 27 VIC. § 303b(a).

employer under the WDA, the employer must have employed 5 or more employees for each working day in each of the 20 or more calendar weeks in the 2-year period preceding a discharge.⁴

Under the WDA, an employer may dismiss an employee:

- a) who engages in a business which conflicts with his duties to his employer or renders him a rival of his employer
- b) whose insolent or offensive conduct toward a customer of the employer injures the employer's business;
- c) whose use of intoxicants or controlled substances interferes with the proper discharge of his duties;
- d) who willfully and intentionally disobeys reasonable and lawful rules, orders, and instructions of the employer; provided, however, the employer shall not bar an employee from patronizing the employer's business after the employee's working hours are completed;
- e) who performs his work assignments in a negligent manner;
- f) whose continuous absences from his place of employment affect the interests of his employer;
- g) who is incompetent or inefficient, thereby impairing his usefulness to his employer;
- h) who is dishonest; or
- i) whose conduct is such that it leads to the refusal, reluctance or inability of other employees to work with him.

Additionally, an employer may terminate an employee as a result of the cessation of business operations or as a result of a general cutback in the work force due to economic hardship, or as a result of the employee's participation in unprotected concerted activity.⁵

⁴ 24 VIC § 62.

⁵ Id. § 76.

Employees discharged for any reason other than one of the enumerated bases of discharge (or for no reason) may have a claim under the WDA. A wrongfully discharged employee must file a written complaint to the Commissioner of Labor within thirty days of his/her discharge in order to sustain an action against the employer.⁶

D. Hours of Labor

An employer in a tourist service industry may employ an employee for 6 consecutive days, provided, however, that such employee is employed for not less than 40 hours in the workweek during which any part of the 6 consecutive days are worked. An employee cannot work more than 6 consecutive days, or longer than a total of 40 hours in a workweek, or for a workday longer than 8 hours, unless such employee receives compensation for employment: (1) on a seventh consecutive day of work, or (2) in excess of 40 hours in a workweek, or (3) in excess of 8 hours in a workday, whichever excess is calculated to give the employee the greatest compensation, at a rate not less than 1 ½ times the regular rate at which he is employed.⁷

With certain exceptions, an employer is required to provide employees with paid ten-minute rest periods within each four hours of continuous work.⁸ The rest periods may not be added to a meal period nor be taken at the beginning or end of a work period.⁹ Additionally, unless otherwise provided in a written contract or by a collective bargaining agreement, an employer must provide an employee who works for a continuous period of seven hours or longer with an uninterrupted meal period of not less than 30 minutes.¹⁰ The meal period must begin no later than five hours after the start of the work period.¹¹

⁶ Id. § 77(a).

⁷ Id. VIC § 20.

⁸ 24 VIC § 20a.

⁹ Id.

¹⁰ 24 VIC § 20b

¹¹ Id.

E. Workmen's Compensation Act

The Worker's Compensation Administration ("the Administration") supervises the Workmen's Compensation Act of the USVI ("WCA"). The Administration is governed by the Worker's Compensation Board of Directors ("WCBOD"). Finally, the WCBOD appoints an Administrator to execute and uphold the policies, directives, rules and regulations promulgated by the WCBOD and the Laws of the USVI pertaining to Worker's Compensation.

The Workmen's Compensation Act ("WCA") of the USVI applies and is mandatory for all employers employing one or more employees; and all employees except for any person employed as a domestic servant in a private home and any person employed for less than ten consecutive days for tasks such as a maintenance, repair, or remodeling. There are also other very narrow exemptions. In addition, worker's compensation insurance is mandatory for USVI employers. The premium is due on an annual basis and insurance is provided through the Virgin Islands Government Insurance Fund.

F. Unemployment Compensation

The USVI passed the Virgin Islands Unemployment Insurance Act in order to provide for its citizens. This Act states that employers, with few exceptions, must make payments into an unemployment insurance fund. All insured workers are entitled to the benefits of the unemployment insurance unless they are otherwise disqualified by law. The maximum weekly benefit amount payable to any insured worker during his benefit year will be the amount equal to 50% of USVI average weekly wage in insured work effective on first day of such benefit year.

G. Plant Closing Act

The Plant Closing Act applies to any business that employed 10 or more employees during any month in a 6-month period prior to closing. The employer must have been in business for more than 1 year and, to be eligible, the affected employee(s) must have been employed for more

than 1 year. For the Act to apply the "plant closing" must result in the permanent layoff of at least 50% of the employees at the facility.

If the Act is applicable then the employer is required to provide at least ninety (90) days advance notification of the "plant closing" to the employees, any union that may represent the employees, and the Commissioner of Labor. Following receipt of the notice, the employees (and presumably their union) will have an option for ninety (90) days to purchase the facility, followed by a further right held by the Government of the Virgin Islands (the "GVI") for an additional sixty (60) days to acquire the facility if the employees do not elect to purchase the facility.

If the facility is not purchased by the employees or the GVI, then within one pay period following layoff, the employer must pay every affected employee severance pay equal to one week's pay for every year of service with the employer calculated at the average wage paid to said employees in the last year of employment. Additionally, if the employer has other locations within the Virgin Islands, the laid off employees are given a hiring preference at the other locations and are to be rehired with the same seniority that they had when laid off.

Finally, because the Virgin Islands is a United States territory, it is subject to the analogous federal statute, i.e., the WARN Act in circumstances where said Act would apply.

II. Federal Labor and Employment Statutes Applicable in the USVI

There are a number of Federal labor and employment laws that are applicable in the USVI. Below is a brief summary of the applicable laws.

A. Age Discrimination in Employment Act ("ADEA")

The ADEA forbids discrimination based on age in employment decisions. The ADEA applies to employers engaged in interstate commerce who have twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

B. Americans with Disabilities Act ("ADA")

The ADA proscribes discrimination in employment based on the existence of a disability. Furthermore, the Act requires that employers take reasonable steps to accommodate disabled individuals in the workplace. This Act applies to employers engaged in interstate commerce who have fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

C. Employee Polygraph Protection Act ("EPPA")

The EPPA greatly restricts polygraph testing of employees. The Act applies to all employers engaged in interstate commerce. Exempted are employers whose primary business purpose is running a security service or manufacturing, distributing or dispensing a controlled substance.

D. Equal Pay Act ("EPA")

The EPA was an amendment to the Fair Labor Standards Act and is designed to promote equal pay for men and women who do the same jobs. Therefore, if the minimum wage provision of the FLSA is applicable to one's business, then the EPA is applicable as well.

E. Fair Labor Standards Act ("FLSA")

The FLSA establishes the minimum wage, overtime and child labor laws for employers engaged in industries affecting interstate commerce, regardless of the number of employees.

F. Family and Medical Leave Act ("FMLA")

The FMLA requires that eligible employees be allowed to take up to twelve weeks of unpaid leave per year for the birth or adoption of a child or the serious health condition of the employee or the spouse, parent or child of the employee. This Act applies to all employers engaged

in commerce where the employer employs fifty or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year.

G. Federal Contractors

Employers that are federal contractors or subcontractors, depending on the type and size of their contracts, may have affirmative action obligations under Executive Order 11246 and the Vocational Rehabilitation Act. Certain federal contractors are also covered by the Drug-Free Workplace Act.

H. Other Federal Regulations

Many employers operate in industries that are regulated by federal agencies. For example, the Department of Transportation requires employers to drug test employees who drive motor vehicles of over 26,000 pounds. Employers in regulated industries must be aware of any requirements imposed by federal or state regulations.

I. National Labor Relations Act and Labor Management Reporting and Disclosure Act

These statutes set forth the guidelines governing labor-management relations. They apply to all employers who are engaged in any industry in or affecting interstate commerce, regardless of the number of employees. Employers who operate under the Railway Labor Act are not subject to these Acts.

J. Occupational Safety and Health Act ("OSHA")

OSHA is the act that established the mechanism for establishing and enforcing safety regulations in the workplace. It applies to all employers who are engaged in an industry affecting commerce, regardless of the number of employees.

K. Title VII

Title VII is the broad civil rights statute that forbids discrimination in hiring based on race, religion, gender and national origin. It applies to employers engaged in interstate commerce who have fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

L. Worker Adjustment Retraining and Notification Act ("WARN")

WARN requires employers to give sixty days' notice to their employees of plant closings or mass layoffs. This Act applies to all businesses that employ 100 or more employees, excluding part-time employees, and to businesses that employ 100 or more employees who in the aggregate work at least 4,000 hours per week (exclusive of hours of overtime).

M. Immigration Reform and Control Act ("IRCA")

IRCA requires that employers verify employment authorization for all employees hired on or after November 6, 1991. Employers are subject to significant fines and penalties for failure to comply with documentation requirements under IRCA, as well as for hiring unauthorized workers or discriminating against persons who appear or sound foreign.
