# Practical Guidance – FY2027

## LEAVE MANAGEMENT

The Leave Management module will assist you in assessing your agency's administration of various leaves of absence and adherence to federal and state laws, rules, regulations, and statewide policies. The State offers a generous leave program to assist employees with balancing work and life responsibilities. Proper administration can support employee engagement. However, arbitrary or inconsistent application of leave rules can lead to employee morale problems. Mismanaging leave, particularly protected leave, also poses risks, such as scrutiny from regulatory organizations and costly litigation.

This module will examine the following areas:

- administrative leave
- leave under the Family and Medical Leave Act (FMLA)
- paid parental leave (PPL)
- education support leave
- compensatory time
- annual leave accrual

**LM1. Does your agency have procedures in place to ensure that administrative leave is used only for reasons outlined in State Personnel Board Rule 16, *Absence from Work*?**

**Practical Guidance:**

State Personnel Board Rule 16, *Absence from Work*, defines administrative leave as “paid time off for specified reasons defined in State law.” Under the Rule, "administrative leave" is not intended to be a catchall category. The thirteen types of administrative leave are listed in Section (5) (d) of the Rule 16, and each type of leave is explained in another section of the rule.

**Reference:**

State Personnel Board Rule 16, *Absence from Work*

**LM2. How does your agency notify employees of their rights under the federal Family and Medical Leave Act (FMLA)? Check all that apply.**

**Practical Guidance:**

Every employer covered by the FMLA must display or post an informative general notice about the FMLA. The poster must be displayed in plain view where all employees and applicants can readily see it, and must have large enough text so it can be easily read. The information displayed on the poster must explain the FMLA provisions and provide information on how to file a complaint with the Wage and Hour Division of the U.S. Department of Labor. This poster must be displayed even if no employees are currently eligible for FMLA leave.

In addition to displaying a poster, if a covered employer has any FMLA eligible employees, it must also provide each employee with a general notice about the FMLA in the employer's employee handbook or other written materials about leave and benefits. If no handbook or written leave materials exist, the employer must distribute this general notice to each new employee upon hire.

**References:**

Family and Medical Leave Act, 29 U.S.C. § 2601 et seq. ♦ U.S. Department of Labor, *Family and Medical Leave Act Employer Guide*, pp. 12-13

**LM3. What action does your agency take when an employee requests FMLA leave or when the agency learns of a need for absence from work that may qualify for FMLA leave? Check all that apply.**

**Practical Guidance:**

When an employee requests FMLA leave, or as soon as an employer has enough information that indicates an employee's need for leave may be for an FMLA-qualifying reason, the employer should begin the FMLA leave process. The employer must provide an Eligibility Notice to the employee within five business days of the initial request for leave or of learning that an employee's leave may be for an FMLA-qualifying reason, unless there are extenuating circumstances. Notification of eligibility may be oral or in writing. If the employer determines that the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible.

Employers must also provide a written Rights and Responsibilities Notice each time the employer provides an eligible employee an Eligibility Notice, within five business days of having notice of the employee's need for leave. The Rights and Responsibilities Notice details the specific expectations and obligations of the employee relating to his or her FMLA leave. If the Eligibility Notice is in writing, the Rights and Responsibilities Notice can be combined with it.

The USDOL has developed optional-use forms which can be used by employers to provide required notices to employees, and by employees to provide certification of their need for leave for an FMLA qualifying reason. Alternatively, employers may use their own forms, if they provide the same basic notice information and require only the same basic certification information.

**References:**

Family and Medical Leave Act, 29 U.S.C. § 2601 et seq. ♦ 29 C.F.R. § 825.300 ♦ U.S. Department of Labor, *Family and Medical Leave Act Employer Guide*, pp. 14-15; 20-21 ♦ U.S. Department of Labor, FMLA: Forms ♦ State Personnel Board Rule 23, *Family and Medical Leave* ♦ Department of Administrative Services, FMLA Tools

## LM4. What documents does your agency require from an employee to prove a family relationship for purposes of FMLA leave?

**Practical Guidance:**

An employer may, but is not required to, request that an employee provide reasonable documentation of the qualifying family relationship. An employee may satisfy this requirement by providing either a simple statement asserting that the requisite family relationship exists, or other documentation such as a child's birth certificate or a court document. It is the employee's choice whether to provide a simple statement or other documentation. Employers may not use a request for confirmation of a family relationship in a manner that interferes with an employee's exercise or attempt to exercise his or her FMLA rights.

**References:**

Family and Medical Leave Act, 29 U.S.C. § 2601 et seq. ♦ U.S. Department of Labor, *Family and Medical Leave Act Employer Guide*, p.25 ♦ State Personnel Board Rule 23, *Family and Medical Leave*

## LM5. How often does your agency contact employees who are on full-time FMLA leave?

**Practical Guidance:**

Federal regulation prohibits employers from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the FMLA. Contacting an employee frequently and/or asking them to perform work while on FMLA leave may constitute inference with an employee's rights under the FMLA. In contrast, infrequent, limited contact on work-related matters or periodic contact to check on the employee's well-being and/or to confirm return-to-work details is not likely to be considered interference.

**References:**

29 C.F.R. § 825.220 ♦ State Personnel Board Rule 23, *Family and Medical Leave* ♦ Nonnie L. Shivers, "Contacting Employees on FMLA Leave: Answers to 4 Inevitable Questions"

**LM6. Are there any situations in which an employee could combine paid parental leave and FMLA leave for more than 12 weeks of absence from work based on the same qualifying event?**

**Practical Guidance:**

State Personnel Board Rule 16, *Absence from Work*, includes the following provision:

> If an employee eligible for paid parental leave is also eligible for leave under the federal Family and Medical Leave Act (FMLA) (see Rule 478-1-.23, Family and Medical Leave), an agency may, by written policy, require paid parental leave to run concurrently with FMLA leave.

If an agency adopts such a policy, and an employee is eligible for FMLA leave at the time PPL begins, the total of PPL and FMLA leave could not exceed 12 weeks. However, because an employee is eligible for PPL before he or she becomes eligible for FMLA leave, a new employee who takes PPL prior to becoming eligible for FMLA leave may be entitled to as much as 18 weeks.

**References:**

State Personnel Board Rule 16, *Absence from Work* ♦ State Personnel Board Rule 23, *Family and Medical Leave*

**LM7. Does your agency limit use of education support leave to employees who are parents of student(s)?**

**Practical Guidance:**

To supplement work-life balance options for state employees, the State provides up to eight paid hours of leave per calendar year to full-time, nontemporary employees for promoting education in the state. Such leave is in addition to, and not charged against, an employee's accrued leave. State law and State Personnel Board Rule 16, *Absence from Work*, do not limit the eligibility for such leave to employees who are the parents of students.

**References:**

O.C.G.A. § 45-20-32 ♦ State Personnel Board Rule 16, *Absence from Work*

**LM8. Does your agency have procedures in place to monitor use of state compensatory time and ensure that earned time off is taken within the one-year time frame established in State Personnel Board Rule 16, *Absence from Work*?**

**Practical Guidance:**

State Personnel Board Rule 16, *Absence from Work*, and statewide policy provide that state compensatory time must be used within one year of the date it is earned. Agencies should ensure that expired state compensatory time balances are no longer available for use by employees.

**References:**

State Personnel Board Rule 16, *Absence from Work* ♦ Office of Planning and Budget and Department of Administrative Services Policy 7, *Rules, Regulations and Procedures Governing Working Hours, the Payment of Overtime, and the Granting of Compensatory Time*

**LM9. Does your agency accept FLSA compensatory time when an employee transfers from another state agency?**

**Practical Guidance:**

Overtime worked by nonexempt employees will normally be compensated with FLSA compensatory time rather than overtime pay, which is credited at a rate of one and one-half hours of compensatory time for each hour of overtime worked. Statewide policy does not permit transfer of FLSA compensatory time between agencies, so an agency must pay out FLSA compensatory time when its employee transfers to another state employer.

**References:**

Fair Labor Standards Act (FLSA), 29 U.S.C. § 207(o) ♦ State Personnel Board Rule 16, *Absence from Work* ♦ Office of Planning and Budget and Department of Administrative Services Policy 7, *Rules, Regulations and Procedures Governing Working Hours, the Payment of Overtime, and the Granting of Compensatory Time*

**LM10. When your agency rehires an employee with previous state employment after a break in state service, how does the agency determine the rate of annual leave accrual for that employee? (For the purposes of this question, assume the employee was not part of a reduction in force in the year prior to rehire.)**

**Practical Guidance:**

Under State Personnel Board Rule 16, *Absence from Work*, annual leave accrues on a graduated scale based on an employee's length of continuous, unbroken state service in a position entitled to accrue leave. An employee begins to accrue annual leave on the first date of employment, with the leave credited at the end of each pay period. When an agency rehires an employee with previous state employment after a break in state service, the rate of annual leave accrual is determined by the employee's most recent state hire date, without regard to the previous state service. An exception applies when an employee is rehired into a position eligible for accrued leave benefits within one year of being laid off by a state employer through reduction in force.

Full-time employees scheduled for at least 40 hours per workweek accrue annual leave at the rates noted below.

| Complete Months of Continuous State Service | Paid Semi-Monthly | Paid Monthly |
|---|---|---|
| 0 through 60 | 5 hours per pay period | 10 hours per pay period |
| 60+ through 120 | 6 hours per pay period | 12 hours per pay period |
| 120+ | 7 hours per pay period | 14 hours per pay period |

**Reference:**

State Personnel Board Rule 16, *Absence from Work*

**PERFORMANCE MANAGEMENT**

The Performance Management module allows you to assess your agency's administration and communication of the State of Georgia's performance management program. A strong performance management program can serve as an effective retention tool. It allows agencies to align work with agency and statewide goals. It provides measurable performance expectations, redirects unsuccessful performance, recognizes successful performance, and supports employee development. Poor or ineffective performance management could result in an agency's inability to efficiently identify and reward high performers, build and maintain a quality workforce, or effectively fulfill the agency mission.

This module will examine the following areas:

- timing, content, and revision of performance plans
- coaching
- performance evaluations
- performance management training

**PM1. Does your agency have processes or practices in place to ensure that each employee receives a performance plan within 45 days of hire or the beginning of a new job and annually within 45 days of the beginning of a new performance period?**

**Practical Guidance:**

Agency management should complete a performance plan for all employees within 45 calendar days of hire or within 45 calendar days following the employee's acceptance of a new position. Such plans should communicate job-specific performance goals that align with organizational priorities. During this time frame, a performance plan should be presented to and discussed with the employee.

**Reference:**

State Personnel Board Rule 14, *Performance Management*

**PM2. Are measurable and specific goals created for all employees within 45 days of hire or the beginning of a new job and annually within 45 days of the beginning of a new performance period?**

**Practical Guidance:**

State Personnel Board Rule 14, *Performance Management*, requires supervisors to develop performance plans, identifying performance standards and expectations on which the employee will be evaluated. The plans are to be presented within 45 calendar days of an employee being placed in a new job and annually within 45 calendar days of the start of a new performance period.

The Rule defines "goal" as a measurable outcome or result to be achieved. Ideally, the performance plan should include goals that are specific, measurable, attainable, relevant, and time-bound ("SMART"). SMART goals enhance the performance management process by clarifying what, when, why, and how a goal might be achieved. Well-crafted goals encourage employees to think ahead, anticipate obstacles, capitalize on momentum, and achieve the intended outcome.

**References:**

State Personnel Board Rule 14, *Performance Management* ♦ Department of Administrative Services, Performance at State of Georgia ♦ Department of Administrative Services, Defining and Writing SMART Goals and Objectives ♦ University of Massachusetts Global, "How to Measure Organizational Performance: The Secret to Effective Goal Setting"

**PM3. Are personal development plans created as a part of all employees' annual performance plans?**

**Practical Guidance:**

A personal development plan (also referred to as an individual development plan or IDP) is an action plan that identifies an employee's short-term and long-term goals as well as projects, activities, and support that contribute to the employee's continual learning and development in the organization.

Because of the importance of improving and/or expanding employees' knowledge, skills, and abilities, all agencies are encouraged to include personal development plans in their employees' performance plans. The focus of the personal development plan may be progression in the current role, building new skill sets or knowledge, and/or preparation for a future role. Development of a personal development plan should be a collaborative effort between the supervisor and employee.

**Reference:**

State Personnel Board Rule 14, *Performance Management*

**PM4. Do managers and supervisors update performance plans during the performance cycle when there are significant changes to an employee's goals, duties, or responsibilities?**

**Practical Guidance:**

A performance plan is a working document and should be reviewed frequently and revised as needed to accommodate changes in responsibilities and expectations. Employees should be immediately notified of any substantive modifications to their performance plan, and the written plan must be updated within 15 calendar days of the modifications.

**Reference:**

State Personnel Board Rule 14, *Performance Management*

**PM5. Does your agency instruct or encourage managers and supervisors to consistently coach employees to reinforce successful performance, address possible performance deficiencies, and follow up on expectations outlined in performance plans?**

**Practical Guidance:**

State Personnel Board Rule 14, *Performance Management*, defines the four components of the state's performance management program: planning, coaching, evaluation, and recognition. The performance management program requires that supervisors monitor their employees' performance and provide coaching throughout the performance period. Coaching should consist of periodic meetings between the supervisor and employee to discuss how effectively the employee is applying competencies to meet job responsibilities and/or goals.

**References:**

State Personnel Board Rule 14, *Performance Management* ♦ Department of Administrative Services, Coaching for Performance

**PM6. Does your agency ensure that managers and supervisors complete an annual evaluation and assign a performance rating to each employee based on the employee's annual performance plan?**

**Practical Guidance:**

Once supervisors and managers set evaluation criteria, they should meet with employees regularly to assess progress and adjust strategies as needed. Regardless of whether performance-based salary increases are authorized, supervisors and managers are responsible for documenting, evaluating, and rating the performance of each employee at the conclusion of each annual performance period. Reviews must be conducted in a fair, unbiased, and equitable manner and should reflect the overall level of performance.

**Reference:**

State Personnel Board Rule 14, *Performance Management*

**PM7. Does your agency's performance management policy or process include procedures for second-level review of performance evaluations to ensure that sufficient detail is included and actual performance is reflected?**

**Practical Guidance:**

State Personnel Board Rule 14, *Performance Management*, requires each agency to designate at least one official to review performance plans, evaluations, and supporting documentation. The documentation should provide meaningful detail, and the evaluation should reflect the employee's overall level of performance. In appropriate cases, the review official will direct the responsible supervisor to revise the performance plan or rating. The official reviewing an employee's performance plan or evaluation should be familiar with the work described and must not be a first- or second-level supervisor of the employee.

**References:**

State Personnel Board Rule 14, *Performance Management* ♦ Department of Administrative Services, 5 Questions to Ask Your Employee During the Performance Evaluation Process ♦ Department of Administrative Services, Monitoring Employee Performance

**PM8. Does your agency's performance management policy or process include procedures by which an employee can request a review if he or she receives an overall performance rating of "unsatisfactory performer" (or its equivalent in the agency's performance management system)?**

**Practical Guidance:**

State Personnel Board Rule 14, *Performance Management*, provides that employees may request review of their annual performance if the overall rating is "Unsatisfactory Performer," or its equivalent, and they disagree with such rating. The Rule also requires the agency to provide the identity of an Agency Review Official to an employee who is given an overall summary rating of "Unsatisfactory Performer," or its equivalent.

**Reference:**

State Personnel Board Rule 14, *Performance Management*

**PM9. Does your agency ensure that employees acknowledge their annual performance evaluation?**

**Practical Guidance:**

Performance evaluations must be acknowledged by the employee and the supervisor or manager. Acknowledgment serves as confirmation of the completion of the annual evaluation process and can be in writing or electronic. In instances where an employee refuses to acknowledge the performance evaluation, agencies must determine an alternate method of documenting that the evaluation was discussed with the employee.

Documenting performance issues is particularly helpful in the context of potential litigation. Good documentation creates credibility for the employer by showing that employees are treated in a fair and consistent manner.

**References:**

State Personnel Board Rule 14, *Performance Management* ♦ Department of Administrative Services, 7 Steps in Performance Evaluation Process ♦ Dori Meinert, "How to Create Bulletproof Documentation"

**PM10. Are agency managers, supervisors, and human resources staff trained in the performance management program?**

**Practical Guidance:**

Performance management can serve as an effective retention tool, and the State's performance management program provides supervisors and employees with the opportunity to align work with agency goals and plans, discuss performance expectations, identify and correct areas for improvement, encourage and recognize strengths, and discuss positive, purposeful approaches for meeting goals. Performance discussions should ideally occur throughout the year during interim reviews and coaching, but must occur in conjunction with performance planning and end-of-year performance evaluation. Frequent, high-quality performance feedback promotes employee engagement and enhances organizational efficiency.

Training human resources staff, supervisors, and managers in all phases of the performance management process enhances the success of the performance management program.

**References:**

State Personnel Board Rule 14, *Performance Management* ♦ Department of Administrative Services, Performance at State of Georgia ♦ George Kettner, "4 Reasons Why Giving and Receiving Performance Feedback Is Important"

## POLICY

The Policy module will assist you in assessing your agency's documentation, communication, and administration of workplace policies and procedures, as well as adherence to federal and state laws, rules, regulations, and guidance. Development and administration of sound policies and practices enable the agency to ensure consistent and objective decisions, minimizing legal risks. Policies and practices that are inconsistent with employment law or that appear unfair or capricious may contribute to recruitment and retention difficulties or low employee engagement.

This module will examine the following areas:

- Americans with Disabilities Act (ADA) compliance
- telework and flexible work hours
- drug and alcohol–free workplace
- access to employee information

- compliance training
- employee complaint resolution
- workplace notices
- policy review
- State Personnel Board Rule updates

**PO1. Does your agency monitor ADA reasonable accommodations?**

**Practical Guidance:**

Reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of the job, or to enjoy benefits and privileges of employment. A qualified employee with a disability must have equal access to workplace communications, be provided with alternative formats (when needed), and allowed the same opportunities as other employees.

It is a violation of the Americans with Disabilities Act to fail to provide reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability, unless doing so would impose undue hardship on the operation of your agency. Undue hardship means that the accommodation would be too difficult or too expensive in light of the employer's size, financial resources, and business needs.

Requests for accommodation should be evaluated on a case-by-case basis to determine the appropriate action. The ADA interactive process also includes monitoring the ongoing effectiveness of accommodations. Changes to the workplace, job duties, or the employee's limitations could impact the effectiveness of the accommodation. If equipment is part of the accommodation, it should be properly maintained and/or upgraded as necessary. In addition, the employer should encourage employees to communicate any issues with their accommodations.

**References:**

Americans with Disabilities Act Amendments Act (ADAAA), 42 U.S.C. § 12112(b)(5)(A) and (B) ♦ U.S. Equal Employment Opportunity Commission, Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA ♦ Job Accommodation Network, Accommodation Process

**PO2. Which agency employees are required to complete a telework agreement?**

**Practical Guidance:**

The Statewide Telework Policy provides that agencies must require all teleworkers, even those who telework only on an occasional basis, to complete a telework agreement prior to the start of telework.

**Reference:**

Department of Administrative Services and Governor's Office of Planning and Budget, *Statewide Telework Policy*

**PO3. Does your agency have a policy that addresses flexible work hours and/or alternative work schedules?**

**Practical Guidance:**

Flexible work hours and other alternative work arrangements have been shown to promote employee retention. Agencies that have a flexible work hours program should establish written policy and require flexible scheduling agreements to ensure that the expectations of all parties are clear. The written agreements should include the following elements:

- identification of particular times/days to be taken off,
- what happens during workweeks shortened by holidays, and
- use of leave and compensatory time.

The flexible work hours policy and agreements should be reviewed periodically to determine if their provisions are consistent with Fair Labor Standards Act (FLSA) requirements.

**References:**

Roy Maurer, "Flexible Work Critical to Retention, Survey Finds" ♦ Stephen Miller, "Study: Flexible Schedules Reduce Conflict, Lower Turnover"

**PO4. If your agency's HR department received an anonymous tip that an employee in a high-risk position was under the influence of drugs, what action would be taken?**

**Practical Guidance:**

All employees are subject to reasonable suspicion drug and/or alcohol testing when a designated agency official determines there is a compelling reason to suspect an employee is not free from alcohol or illegal drugs. The State of Georgia is a government entity that must be cognizant of the Fourth Amendment to the U.S. Constitution, which prohibits unreasonable search and seizure. A drug test is considered a search and seizure, so when ordered by the State, it must be reasonable. Although an employer may investigate an employee's behavior following a third-party tip, referral for reasonable suspicion drug testing must be based on directly observed physical, behavioral, or performance indicators.

**References:**

State Personnel Board Rule 21, *Drug and Alcohol–Free Workplace Program* ♦ Department of Administrative Services, Reasonable Suspicion Checklist

**PO5. At what point should a drug and alcohol abuse evaluation expert (i.e., employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor) typically become involved in the process when an employee self-discloses a substance abuse issue?**

**Practical Guidance:**

If certain conditions are met, an employee who self-discloses a substance abuse issue is not subject to immediate dismissal from employment. The employee must make the disclosure in writing to an official designated by the agency. The disclosure must be made prior to arrest for an offense involving alcohol, if the employee is disclosing an alcohol problem, and prior to arrest for an offense involving a controlled substance, marijuana, or a dangerous drug, if the employee is disclosing an illegal drug problem. In addition, the employee must not have refused ordered substance abuse testing or tested positive for illegal drug use or alcohol. If the employee is in a position regulated by the Federal Motor Carrier Safety Administration (FMCSA), the disclosure must be made before the employee reports for duty to perform safety-sensitive transportation functions. If all of these conditions are met, the agency will then refer the employee to a drug and alcohol evaluation expert.

The employee must follow a treatment plan, which is at the employee's expense, and provide certification of completion of the program. Finally, the employee must complete return-to-duty substance abuse testing and receive a negative result before returning to work.

**Reference:**

State Personnel Board Rule 21A, *Self-Disclosure of Substance Abuse*

**PO6. How does your agency control access to employees' medical and other personal information?**

**Practical Guidance:**

Federal guidelines provide that medical information received in the course of employment must be kept confidential and maintained separately from the personnel file. If such information is kept electronically, it should be password protected. Medical information includes drug and alcohol test results, workers' compensation records, benefit enrollment and claims forms containing health information, reports of employee medical exams, notes from a doctor excusing the employee from work, medical and insurance records, and genetic information. Documentation related to a disability accommodation and documentation connected with FMLA leave (e.g., health care provider certification) must be maintained as confidential records.

Agencies should collect and retain personal information only to the extent necessary to effectively conduct business and administer employment and benefit programs. Access to employees' personal information should be limited to employees who need the information to complete their job duties. Agencies must make every effort to protect every employee's privacy rights and interests and to prevent inappropriate or unnecessary disclosures.

**References:**

Genetic Information Nondiscrimination Act (GINA), 42 U.S.C. § 2000ff–5 ♦ Americans with Disabilities Act Amendments Act (ADAAA), 42 U.S.C. § 12112(d)(3)(B) ♦ 29 C.F.R. § 825.500(g) ♦ 29 C.F.R. § 1630.14(4)(i) ♦ 29 C.F.R. § 1635.9 ♦ 49 C.F.R. § 40.333 ♦ 49 C.F.R. § 382.401(a) ♦ State Personnel Board Rule 9, *Records*

**PO7. Within the last 12 months, has your agency provided training and/or written guidelines to managers and supervisors to ensure compliance with federal and state employment laws and regulations?**

**Practical Guidance**:

An agency's HR department should ensure that managers and supervisors have a solid understanding of the agency's policies and procedures regarding federal and state employment law topics such as unlawful discrimination, harassment, and retaliation; confidentiality; the Americans with Disabilities Act (ADA); the Family and Medical Leave Act (FMLA); and the Fair Labor Standards Act (FLSA). Training and information increase the likelihood of managers' and supervisors' compliance with state and federal laws and best practices, which in turn minimizes the potential for claims of discrimination and other legal problems. Training will also guide managers and supervisors in properly responding to employee requests and concerns.

**References:**

Allen Smith, "Train Managers to Spot Employment Law Issues" ♦ Employers Council, Prioritize Employment Law Training to Gain These 6 Big Benefits

**PO8. Does your agency have a formal process for resolution of employee complaints (other than complaints of sexual harassment or retaliation, which should be addressed through a separate process)?**

**Practical Guidance:**

State Personnel Board Rule 20, *Employee Complaint Resolution Procedure*, requires each agency to implement a complaint resolution program to address employee concerns that are unrelated to sexual harassment. (Complaints and reports of sexual harassment and connected retaliation must be processed based on the procedures provided in the Statewide Sexual Harassment Prevention Policy.)

A complaint resolution procedure serves to encourage effective operations and a productive workforce. At a minimum, an agency program must make available the procedure outlined in State Personnel Board Rule 20.

**Reference:**

State Personnel Board Rule 20, *Employee Complaint Resolution Procedure*

**PO9. Where does your agency display workplace notices? Check all that apply.**

**Practical Guidance**:

Generally, federal workplace posters must be displayed or posted in conspicuous places where they are easily visible to all employees. Where an employer has employees reporting directly to work in several different buildings, the employer must post all required federal posters in each building, even if the buildings are in the same general vicinity( e.g., in an industrial park or on a campus). Additionally, certain posters are required to be placed where they can be seen by applicants for employment.

Federal posting requirements vary by statute, most of which do not address electronic delivery. In most cases, electronic formats supplement but do not replace physical posting requirements. However, providing remote workers with easy access to the notices via electronic methods, the company's intranet, or sending copies directly to remote workers via email, is considered best practice.

State-specific workplace posters must be displayed or posted in conspicuous places where they are readily accessible to all employees. In certain situations outlined in regulations of the Georgia Department of Labor, electronic posting may substitute for physical posting of notices related to unemployment benefits. In most instances, however, electronic posting is a supplement to physical posting.

**References:**

U.S. Department of Labor, Posters - Frequently Asked Questions ♦ O.C.G.A. § 34-9-81.1 ♦ Georgia Department of Labor, Ga. Comp. R. & Regs. R. 300-2-7-.15 ♦ Dana Holle, "Where Do Employers Need to Display Labor Law Posters?"

**PO10. Does your agency track and review changes to State Personnel Board Rules to determine necessary changes to agency policies and processes?**

**Practical Guidance:**

The Constitution of the State of Georgia provides for a State Personnel Board. Its five members are appointed by the Governor and directed by the Constitution and state statutes to provide policy direction for the state's human resources function.

For executive branch agencies and other state entities that meet the definition of "department or agency" in state statute, Rules of the State Personnel Board have the force and effect of law. Agency policies, therefore, must align with SPB Rules, and agencies should review their policies on a regular basis to ensure compliance.

**References:**

Ga. Const. Ga. Const. Art. IV, § III, Para. I ♦ O.C.G.A. §§ 45-20-2, 45-20-3, and 45-20-4 ♦ Department of Administrative Services, Summary of State Personnel Board Rule Modifications, 2015-2026

**PO11. When did your agency last update its core HR policies (leave management, FMLA leave, recruitment and selection, and FLSA)?**

**Practical Guidance:**

The state legislature directs that state agencies and entities "operate within a framework of consistent core personnel policies and practices" and in compliance with "all state and federal equal employment opportunity and nondiscrimination laws." Moreover, rules approved by the State Personnel Board and signed by the governor have the force and effect of law as to covered agencies and entities.

Failure to align agency policies with current federal and state employment laws, rules, and policies poses a substantial compliance risk. Agency policies should be reviewed and updated on a regular basis.

**References:**

O.C.G.A. §§ 45-20-2, 45-20-3, and 45-20-4

**PO12. Indicate which of these recent modifications to State Personnel Board Rules (which should have resulted in updates to your agency's HR policies) you are aware of:**

**Practical Guidance:**

The Constitution of the State of Georgia provides for a State Personnel Board. Its five members are appointed by the Governor and directed by the Constitution and state statutes to provide policy direction for the state's human resources function.

For executive branch agencies and other state entities that meet the definition of "department or agency" in state statute, Rules of the State Personnel Board have the force and effect of law. Agency policies, therefore, must align with SPB Rules, and agencies should review their policies on a regular basis to ensure compliance.

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**RECRUITMENT AND SELECTION**

The Recruitment and Selection module will assist you in assessing your agency's identification, organization, documentation, and achievement of its staffing requirements, while adhering to required federal and state laws, rules, and regulations. The process of attracting and selecting a quality workforce directly impacts the agency's ability to fulfill its immediate and long-term strategic goals. Inadequate recruitment and selection programs can inadvertently screen out talented candidates and hinder an agency's ability to identify and mitigate adverse impact against protected categories of applicants. Programs that are inconsistent with applicable laws and regulations can lead to unlawful discrimination complaints and costly litigation.

This module will examine the following areas:

- veterans' preference
- recruitment methods
- hiring criteria
- review of screening materials

- Medical and Physical Examination Program (MAPEP)
- background and reference checks
- federal employment eligibility verification
- tracking recruitment efforts

**RS1. Does your agency provide preference to qualified veterans in the recruitment and selection process?**

**Practical Guidance:**

The State affords additional points on the entrance exams of qualified veterans and the spouses of certain disabled or deceased veterans seeking to enter state employment. If entrance exams are not used as part of the selection process, agencies must give due consideration to veterans and must select a qualified veteran in preference to an equally qualified non-veteran. Such preference is available only for initial state employment and does not apply in cases of promotion, demotion, or transfer to another job.

**References:**

Ga. Const. Art. IV, § III, Para. II ♦ O.C.G.A. §§ 45-2-20, 45-2-21, and 45-2-22 ♦ State Personnel Board Rule 18, *Veterans' Preference*

**RS2. Indicate which of the following methods your agency has used in recruitment. If your agency has used additional methods, please explain in the comment section.**

**Practical Guidance:**

Using a variety of recruiting sources helps to ensure a broad applicant pool and increases the likelihood of finding qualified candidates.

**References:**

National Association of Colleges and Employers, The Top Strategies Employers Use to Ensure a Robust Candidate Pool ♦ Society for Human Resource Management, Optimize Your Hiring Strategy with Business-Driven Recruiting

**RS3. Does your agency conduct skills-based/experience-based hiring, degree-based hiring, or both?**

**Practical Guidance:**

The Reducing Barriers to State Employment Act of 2023 directs the Department of Administrative Services (DOAS) to regularly assess the educational, experiential, and training requirements necessary for state jobs and identify those for which such requirements could be reduced. The goal of the legislation is to reduce the number of jobs for which a four-year college degree is required as a condition of employment.

In FY2024, the DOAS Human Resources Administration reviewed 1,439 jobs, which included varying levels of qualification based on degree requirements combined with experience. Based upon the review, 791 degree requirements were removed, and/or experience requirements were reduced so that related work experience could substitute for formal education requirements.

Skills-based hiring focuses on individuals' abilities and competencies rather than their education and direct experience. In situations where a degree and/or certification are not strictly required, skills-based hiring broadens the applicant pool.

**References:**

O.C.G.A. § 45-20-22 ♦ Department of Administrative Services, *State of Georgia Fiscal Year 2024 Workforce Report* ♦ National Governors Association, Empowering Progress: Harnessing Skills-Based Strategies to Drive Public Sector Excellence ♦ Theresa Agovino, "Skills-Based Hiring Is Gaining Ground"

**RS4. What designated person(s) in your agency are responsible for ensuring that job interview questions and other screening materials comply with employment law?**

**Practical Guidance:**

State and federal employment laws restrict information that may be requested during the job interview process. Therefore, it is important for human resources professionals who are familiar with these employment laws to review job interview questions. Ideally, job interview questions should be developed jointly by a human resources representative and the hiring manager to ensure legal compliance issues are considered and desired job qualifications are addressed. Interview questions should relate directly to the job and the applicant's ability to perform the job's essential functions.

**References:**

U.S. Equal Employment Opportunity Commission, *Prohibited Employment Policies/Practices* ♦ State Personnel Board Rule 3, *Antidiscrimination* ♦ State Personnel Board Rule 6, *Recruiting, Screening, and Hiring* ♦ Society for Human Resource Management, Interview and Employment Application Questions: Best Practices for Compliance

**RS5. After reviewing a completed MAPEP General Information form, does your agency follow up with the prospective employee?**

**Practical Guidance:**

The Medical and Physical Examination Program (MAPEP) is a pre-employment fitness-for-duty certification program required by state law. The purpose of the program is to ensure that the prospective employee will be physically capable of carrying out his or her job duties; to protect the prospective employee from possible harmful effects associated with his or her employment, which may arise because of a preexisting physical issue; and to protect the state from potential liability under workers' compensation laws for conditions arising after employment, but caused in whole or part by preexisting physical conditions.

The MAPEP paperwork and review process must be completed after an offer of employment but before the effective date of employment. If a condition exists which would impair the fulfillment of job duties, the employing agency is required to provide reasonable accommodation to the extent required by the Americans with Disabilities Act (ADA). However, an employer is not required to eliminate an essential function of the position. This is because a person with a disability who is unable to perform the essential job functions, with or without reasonable accommodation, is not a "qualified" individual with a disability within the meaning of the ADA.

Compliance with the Pregnant Workers Fairness Act (PWFA) is also a consideration. Under the PWFA, a job applicant with known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions can still be considered qualified, even if unable to perform an essential job function, as long as the inability is “temporary,” the employee could perform the function “in the near future,” and the inability to perform the essential function can be reasonably accommodated.

**References:**

U.S. Equal Employment Opportunity Commission, Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA ♦ U.S. Equal Employment Opportunity Commission, What You Should Know About the Pregnant Workers Fairness Act ♦ O.C.G.A. § 45-2-40 et seq. ♦ State Personnel Board Rule 6, *Recruiting, Screening, and Hiring* ♦ Department of Administrative Services, Manual for the Medical and Physical Examination Program

**RS6. Does your agency require a signed release from an applicant, on a stand-alone form separate from the job application, before conducting a criminal history record check?**

**Practical Guidance:**

Before accessing criminal history or seeking a background report from a third party (including the Georgia Crime Information Center), agencies must obtain written consent from the applicant and provide notice that the background information might be used for employment decisions. The Fair Credit Reporting Act requires the release to be a stand-alone document, separate from the job application.

**References:**

Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. ♦ State Personnel Board Rule 6, *Recruiting, Screening, and Hiring*

**RS7. What employment action does your agency take when a background check reveals unfavorable information about a job applicant?**

**Practical Guidance:**

Upon receiving criminal history or other background information that would prevent employment, an agency must give the applicant notice that information from the background report may prevent employment, a copy of the background report, and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act." Before making an employment decision, the agency must provide the applicant an opportunity to discuss the content, accuracy, and relevance of the report.

**References:**

Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. ♦ State Personnel Board Rule 6, *Recruiting, Screening, and Hiring*

**RS8. What is your agency's process after a new employee submits I-9 documents?**

**Practical Guidance:**

Federal regulations for Form I-9 require employers, within three business days after the first day of employment, to physically examine the documentation presented by new employees from the Lists of Acceptable Documents, or an acceptable receipt, to ensure that the documentation presented reasonably appears to be genuine and to relate to the individual who presents it. However, the U.S. Department of Homeland Security (DHS) has authorized alternative procedures for I-9 document inspection that may be used if certain requirements are met. To use the new procedures, an employer must be an E-Verify user. (In Georgia, public employers are required by state law to use the E-Verify system.) In addition, employers must:

- remotely examine the employee's I-9 documents via live video,
- appropriately document use of the alternative procedure on the I-9 form (see the USCIS website for details),
- retain copies of all I-9 documents examined remotely, and
- create a case in E-Verify.

A qualified employer may choose to offer the alternative procedure for remote hires only but continue to apply physical examination procedures to all employees who work onsite or in a hybrid capacity, so long as the employer does not adopt such a practice for a discriminatory purpose or treat employees differently based on their citizenship, immigration status, or national origin. Use of the alternative procedure does not change the requirement that a worker's identity and employment eligibility must be verified within three days of the first day of employment, or that either the employer or its authorized representative performs the document inspection.

**References:**

8 C.F.R. § 274a.2 ♦ U.S. Citizenship and Immigration Services, New Form I-9; Notice Published Allowing E-Verify Employers to Remotely Examine Form I-9 Documents ♦ U.S. Department of Homeland Security, Optional Alternative 1 to the Physical Document Examination Associated With Employment Eligibility Verification (Form I-9) ♦ O.C.G.A. § 13-10-91

**RS9. Which of the following items does your agency review for accuracy and/or proper completion in completed I-9 forms? Check all that apply.**

**Practical Guidance:**

On March 16, 2026, U.S. Immigration & Customs Enforcement (ICE) issued new guidance concerning substantive and technical violations of Form I-9.

If technical or procedural failures are identified during inspection of I-9 forms, the employer is given at least 10 business days to make corrections. Monetary fines may be imposed for all substantive violations and uncorrected technical or procedural failures. The recently revised ICE fact sheet reclassifies several common errors as substantive, including:

- Missing date of birth,
- Missing date of hire,
- Incorrect use of Spanish-language I-9 outside of Puerto Rico,
- Preparer and/or translator errors (missing preparer and/or translator's complete name, address, signature, and date) in Supplement A,
- Missing title of the employer or authorized representative,
- Failure to date sections 1 or 2,

- Failure to enter rehire date in Supplement B, and
- When utilizing remote verification procedure, failure to check the alternative procedure box in Section 2 or Supplement B to indicate that remote inspection was used.

ICE has increased I-9 audit activity in recent years, and the reclassification of many previously correctable errors as substantive violations significantly reduces employers' ability to avoid fines for routine administrative mistakes.

**Reference:**

U.S. Immigration & Customs Enforcement, Form I-9 Inspection Under Immigration and Nationality Act § 274A

**RS10. What time frame does your agency allow for E-Verify submission for new hires?**

**Practical Guidance:**

All public employers in Georgia are required to participate in E-Verify, the federal work authorization program. The earliest the employer may initiate an E-Verify query is after an individual accepts an offer of employment and after the employee and employer complete Form I-9. The employer must initiate the query no later than the end of three business days after the new hire's actual start date.

**References:**

U.S. Department of Homeland Security and U.S. Citizenship and Immigration Services, E-Verify User Manual ♦ O.C.G.A. § 13-10-91 ♦ State Personnel Board Rule 6, *Recruiting, Screening, and Hiring*

**RS11. Does your agency track the effectiveness of its recruitment efforts using metrics such as time to fill, cost per hire, offer acceptance rate, best sources, or number of qualified candidates per job?**

**Practical Guidance:**

Tracking key recruitment metrics helps agencies focus recruitment time and budget to obtain the highest return on investment in terms of both candidate volume and candidate quality.

**References:**

Lou Adler, "Boost Quality of Hire with Real-Time Feedback" ♦ Roy Maurer, "Tips for High-Volume Recruiters"

## CLASSIFICATION AND COMPENSATION

The Classification and Compensation module will allow you to assess your agency's application of uniform and equitable standards regarding position classification and compliance with federal and state laws, rules, and regulations. Additionally, this module will assist you in measuring your agency's administration of the State's compensation plan to ensure a clearly defined, comprehensive, legally defensible program. In addition, misclassification and non-competitive compensation can negatively affect the agency's ability to recruit and retain the quality workforce needed to fulfill its mission. Your agency can achieve sound position management by creating, changing, assigning, and reassigning responsibilities and duties to positions in a timely and objective manner and making corresponding adjustments in compensation when appropriate.

This module will examine the following areas:

- compensation policies and procedures
- holiday pay
- drug testing classification
- Fair Labor Standards Act (FLSA) compliance
- break time for nursing mothers
- independent contractors

**CC1. Does your agency have established policies and procedures for setting pay rates and maintaining accurate compensation records upon hire and job changes (e.g., transfers, promotions, demotions, and changes between part-time and full-time status)?**

**Practical Guidance:**

State Personnel Board Rules, salary plans, and the Addenda to the State Compensation Plan provide a framework for compensation of state employees. Because this framework allows for some flexibility, agencies should establish internal compensation policies to support consistent pay practices. The agency's policies should include criteria that relate to hiring salaries and compensation for promotions, demotions, and lateral transfers. Policies may also define conditional pay administration, criteria-based adjustments, and incentive compensation.

**References:**

State Personnel Board Rule 11, *Compensation Plan* ♦ State Personnel Board Rule 12, *Salary* ♦ State Personnel Board Rule 13, *Meritorious Award, Hiring Incentive, and Goal-Based Incentive Programs* ♦ Department of Administrative Services, Addenda to the Compensation Plan

**CC2. Does your agency have and comply with a policy to pay salaries that are at least the minimum and no more than the maximum of a position's pay grade?**

**Practical Guidance:**

State Personnel Board Rule 12, *Salary*, directs that an employee's salary should not be less than the minimum or more than the maximum for the applicable pay grade.

**Reference:**

State Personnel Board Rule 12, *Salary*

**CC3. Does your agency pay a new full-time employee for a state holiday when the employee is entering state service the scheduled workday following the holiday?**

**Practical Guidance:**

To be paid for a holiday an employee must be in pay status the full scheduled work shift of the scheduled workday before or after the holiday. However, payment is not made if the employee is (1) entering or reentering state service the scheduled workday following the holiday; (2) separating from state service and the holiday occurs after the date of separation; or (3) separating from state service and the holiday would be the employee's last day of employment, unless the holiday is at the end of the employee's normal workweek.

**Reference:**

State Personnel Board Rule 16, *Absence from Work*

**CC4. Does your agency review position information periodically and/or when there are significant changes to duties to ensure the correct category for drug testing?**

**Practical Guidance:**

To ensure safety in the workplace, the State of Georgia uses pre-employment and random drug testing programs for high-risk positions and federally regulated transportation positions. Agencies are responsible for determining which positions are subject to testing based on each position's assigned duties. Positions that meet established criteria as either a high-risk position or a federally regulated transportation position are appropriately coded in the agency's HCM system, and applicants for and incumbents of these positions are subject to pre-employment and random testing.

The State of Georgia is a government entity that must be cognizant of the Fourth Amendment to the U.S. Constitution, which prohibits unreasonable search and seizure. A drug test is considered a search and seizure, so when ordered by the State, it must be reasonable.

To meet the legal burden for conducting a legal pre-employment or random drug test, an agency must show a compelling governmental interest in ensuring the applicant or employee is drug-free. Positions that regularly require high-risk work or involve transportation duties regulated by the U.S. Department of Transportation or Coast Guard meet this standard.

It is best practice for agencies with high-risk or transportation functions to periodically review positions to ensure they are coded correctly for testing. If a position no longer regularly requires high-risk work, for example, the testing code should be changed because the State no longer has a compelling governmental interest in randomly testing that position's incumbent.

**References:**

O.C.G.A. § 45-23-1, et seq. ♦ O.C.G.A. § 45-20-91 ♦ O.C.G.A. § 45-20-111 ♦ State Personnel Board Rule 21, *Drug and Alcohol–Free Workplace Program*

**CC5. Which factors does your agency consider in determining whether a position meets the administrative or executive FLSA exemption?**

**Practical Guidance:**

To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at a rate set forth in federal regulation. Job titles alone do not determine exempt status. To support the administrative exemption, an employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers, and the employee's primary duty must also include the exercise of discretion and independent judgment with respect to matters of significance. To support the executive FLSA exemption, the employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise; the employee must customarily and regularly direct the work of at least two full-time employees or their equivalent; and the employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

**References:**

29 C.F.R. Part 541 ♦ U.S. Department of Labor, *Fact Sheet #17B: Exemption for Executive Employees Under the Fair Labor Standards Act (FLSA)* ♦ U.S. Department of Labor, *Fact Sheet #17C: Exemption for Administrative Employees Under the Fair Labor Standards Act (FLSA)* ♦ U.S. Department of Labor, *Fact Sheet #17G: Salary Basis Requirement and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)* ♦ Appendix 1 to Office of Planning and Budget and Department of Administrative Services Policy 7

**CC6. How does your agency notify employees about the State's use of FLSA compensatory time in lieu of overtime pay?**

**Practical Guidance:**

State policy requires employees to sign an FLSA compensatory time acknowledgement as a condition of employment at the time of hire.

FLSA nonexempt state employees may receive compensatory time off in lieu of monetary overtime compensation for time worked over 40 hours in a workweek. (The FLSA permits extended work periods and different overtime thresholds for law enforcement, fire protection, hospital, and nursing home employees.) As a condition for use of compensatory time in lieu of overtime payment, the FLSA requires that the employer and employee reach an agreement or understanding prior to the performance of work.

In accordance with the statewide overtime policy, all individuals employed as of April 15, 1986, will be considered to have agreed, or understood, that they may receive FLSA compensatory time rather than overtime payment as compensation for overtime worked. Each individual employed after that date must sign a document to this effect as a condition of employment at the time of hire. Such document will contain the statement provided in Appendix 2 of the statewide overtime policy.

**References:**

29 U.S.C. § 207(o)(1) and (2) ♦ 29 CFR § 553.23 ♦ Office of Planning and Budget and Department of Administrative Services Policy 7, *Rules, Regulations and Procedures Governing Working Hours, the Payment of Overtime, and the Granting of Compensatory Time* ♦ Appendix 2 to Office of Planning and Budget and Department of Administrative Services Policy 7

**CC7. Does your agency have a process for tracking all hours worked for nonexempt employees who telework?**

**Practical Guidance:**

FLSA nonexempt employees must report all time worked, regardless of whether the work is performed with supervisory approval and regardless of where the work is performed.

Nonexempt employees who are "suffered or permitted" to work must be compensated for hours worked, even if the employer did not request the additional work. For example, a nonexempt employee who is allowed to voluntarily continue to work at the end of a shift to finish an assigned task or to correct errors must report the extra work time and must be compensated.

**References:**

29 C.F.R. § 785.11 ♦ U.S. Department of Labor, Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA) ♦ Department of Administrative Services and Governor's Office of Planning and Budget, *Statewide Telework Policy* ♦ Office of Planning and Budget and Department of Administrative Services Policy 7, *Rules, Regulations and Procedures Governing Working Hours, the Payment of Overtime, and the Granting of Compensatory Time*

**CC8. What action does your agency take when nonexempt employees work unauthorized overtime?**

**Practical Guidance:**

Agency management should take corrective or disciplinary action against employees who work unauthorized overtime so that the practice is not repeated. However, the Fair Labor Standards Act (FLSA) requires employers to compensate covered nonexempt employees for all hours worked in a workweek.

**References:**

29 C.F.R. § 785.11 ♦ U.S. Department of Labor, Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA)

**CC9. Does your agency provide paid break time for nursing mothers to express breast milk?**

**Practical Guidance:**

Under previous state statutory provisions and the federal Fair Labor Standards Act (FLSA), state employers have been required to provide breaks to employees for the purpose of expressing breast milk. The Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), which became effective December 29, 2022, amended the Fair Labor Standards Act (FLSA) to expand lactation break rights to exempt employees.

Under state law effective August 2020, state agencies are required to provide paid break time of a reasonable duration to any employee who desires to express breast milk during work hours at the agency's worksite. While the PUMP Act does not require lactation breaks to be paid, the state law requires that such break time must "paid at the employee's regular rate of compensation." However, state law does not require agencies to provide paid lactation break time to an employee on any day that the employee is working away from the agency's worksite.

The state law reiterates agencies' obligations to provide break time of a reasonable duration and a private location other than a restroom for expressing breast milk. It also requires the agency to provide such a location "in close proximity to the employee's work area." The state law further provides that "no agency shall have liability under this Code section for making reasonable efforts to comply" with its requirements.

**References:**

29 U.S.C. § 218d ♦ O.C.G.A. § 45-1-7 ♦ Office of Planning and Budget and Department of Administrative Services Policy 7, *Rules, Regulations and Procedures Governing Working Hours, the Payment of Overtime, and the Granting of Compensatory Time*

**CC10. When hiring independent contractors, does your agency review the duties and expectations to determine whether workers are bona fide independent contractors?**

**Practical Guidance:**

The U.S. Department of Labor (USDOL) and the Internal Revenue Service (IRS) require employers to properly classify their workers as employees or independent contractors because of the tax, pay, and benefits implications of each designation. Multiple factors are relevant to a worker's classification, including the degree of control exercised by the potential employer and whether the work performed is a primary part of the employer's business. Workers who are economically dependent on the business of the employer, regardless of skill level, are typically considered employees. On the other hand, independent contractors are workers with economic independence who are in business for themselves.

Whether a worker is an employee or an independent contractor under the FLSA is determined by looking at the economic realities of the worker's relationship with the employer. Several factors, explained below, are analyzed to determine whether an employment relationship exists under the FLSA. No single factor determines a worker's status, and no one factor or combination of factors is more important than the others.

(1) **Opportunity for profit or loss depending on managerial skill.** This factor considers whether the worker has opportunities for profit or loss based on managerial skill (including initiative or business acumen or judgment) that affect the worker's economic success or failure in performing the work. The following facts, among others, can be relevant: whether the worker determines or can meaningfully negotiate the charge or pay for the work provided; whether the worker accepts or declines jobs or chooses the order and/or time in which the jobs are performed; whether the worker engages in marketing, advertising, or other efforts to expand their business or secure more work; and whether the worker makes decisions to hire others, purchase materials and equipment, and/or rent space.

(2) **Investments by the worker and the potential employer.** Investments by a worker that support the growth of a business, including by increasing the number of clients, reducing costs, extending market reach, or increasing sales, weigh in favor of independent contractor status.

(3) **Degree of permanence of the work relationship.** This factor weighs in favor of independent contractor status when the work relationship is definite in duration, non-exclusive, project-based, or sporadic based on the worker being in business for themself and marketing their services or labor to multiple entities.

(4) **Nature and degree of control.** This factor considers the potential employer's control, including reserved control, over the performance of the work and the economic aspects of the working relationship. Relevant facts include whether the potential employer sets the worker's schedule, supervises the performance of the work, or explicitly limits the worker's ability to work for others.

(5) **Extent to which the work performed is an integral part of the potential employer's business.** This factor weighs in favor of independent contractor status when the work performed is not critical, necessary, or central to the potential employer's principal business.

(6) **Skill and initiative.** Where the worker brings specialized skills to the work relationship, this fact is not itself indicative of independent contractor status because both employees and independent contractors may be skilled workers. It is the worker's use of those specialized skills in connection with business-like initiative that indicates the worker is an independent contractor.

(7) **Additional factors.** Additional factors may be relevant in determining whether the worker is an employee or independent contractor for purposes of the FLSA, if the factors in some way indicate whether the worker is in business for themself, as opposed to being economically dependent on the potential employer for work.

**References:**

29 C.F.R. § 795.110 ♦ Internal Revenue Service, Independent contractor (self-employed) or employee? ♦ U.S. Department of Labor, Employee or Independent Contractor Classification Under the Fair Labor Standards Act ♦ U.S. Department of Labor, Fact Sheet 13: Employee or Independent Contractor Classification Under the Fair Labor Standards Act (FLSA)