



EMPLOYMENT IN THE UNITED STATES OF AMERICA



The United States is a free-market economy made up of 50 United States, one of the worlds largest. It is known as the land of opportunity for its innovation, and the ability for people to prosper. The United States permits a lot of decision making power to individuals, employers, cities, and states, allowing different entities to approve their own rules and regulations that may be in addition to any federal legislations. Some key sectors within the U.S economy are technology, healthcare, and retail. Below is some key information regarding employment in the United States, intended to provide a brief overview of employment law in the United States. It is not intended as substitute for professional legal advice and counsel.



WORKING TIME AND OVERTIME

The standard working hours in the United States is 40 hours per week. However, there is a substantial variation amongst industries and jobs. Under the Fair Labour Standards Act (FLSA), non-exempt employees who work more than 40 hours per week are entitled to one and a half times their standard salary rate. Employees that are exempt are not entitled to overtime payments. Typical job roles that are exempt are managerial or executive positions, administrative positions, creative jobs, and professional positions.

ANNUAL LEAVE

Annual leave is not a legal requirement in the United States. However, most employers will offer paid annual leave to employees. This is typically 10 days but can vary between employers. There are 10 public holidays in the United States, however, this can vary according to the state the employee is located in. It is at the employers discretion if an employee is paid for public holidays.

TRIAL PERIOD

A probation period in the U.S. typically lasts between 3 – 6 months. The length depends on what has been agreed between the employer and employee and can be extended beyond 6 months.

RESIGNATION AND DISMISSAL

Many employees in the U.S. with the exception of the state of Montana are employed 'at will' meaning both the employee and employer can terminate the employment relationship at any time. If a written contract of employment is provided most employers will state any required notice periods on both sides. Generally, at will employees can be terminated with or without cause, provided it is not for an illegal reason such as race, age, gender, on parental leave, or on sick leave. This is classed as unjustified dismissal or wrongful termination. The employment contracts of management, senior executives, and highly skilled workers will often include a 'just cause' termination clause, meaning the employee may only be terminated for a cause listing the permitted grounds.

In mass dismissal cases the Worker Adjustment and Retraining Notification Act (WARN) will need to be followed. The WARN Act has various criteria depending on the number of employees, and the reason for the mass lay off of employees. There is no legal requirement for employers to provide terminated employees severance payments. However, this can be negotiated when the employee is first hired. Employees that have health insurance with their employer should not be immediately cut off from their policies after being terminated. Under the Consolidated Omnibus Budget Reconciliation Act (COBRA), a terminated employee may continue to use their health insurance for a certain number of months after termination. They will also be entitled to a special enrolment period and may begin to search for an individual or family policy on their own.



RESTRICTIVE COVENANTS

The enforceability of restrictive covenants in the U.S are determined by state law. Courts within states that enforce non-compete agreements hold that a covenant restricting the activities of an employee upon the termination of their employment can be enforced if it protects a justifiable business interest, is fairly limited in scope, and is reasonable. Meaning, it should only offer fair protection to the employer's interest and not be so extensive as to interfere with the interests of the public or prevent an employee from engaging in his or her livelihood. The following are some factors when considering the fairness of a restrictive covenant. Scope of business covered, the business need for the protection, the extent of interference with public interest, the extent of limitation on an employee's opportunity to pursue further employment options, length of time the restriction covers, and geographical area this covers.

CONTRACT OF EMPLOYMENT

There are no minimum requirements for an employment contract in the U.S, and they can take multiple forms. It is always best practice to produce a contract of employment in writing that include the terms of employment such as salary, start date, benefits, work location, and length of employment. A written contract can also describe if an employee is an 'at will' employee. There are also no legal provisions for fixed term contracts. Unlike many other countries there is no limit on the duration of a fixed term contract of employment, or the circumstances in which a fixed term contract may be entered.

MATERNITY AND PATERNITY LEAVE

The U.S is one of the only countries in the world that does not require paid maternity or paternity leave by law. However, although paid parental leave is not required at the federal level in the U.S, a few states do mandate paid parental leave. Under the Family and Medical Leave Act (FMLA) some employees are entitled to up to 12 weeks of unpaid maternity leave. This is on the basis that the employer has at least 50 employees within a 75-mile radius, and that the employee has worked at least 1,250 hours over the past 12 months. Some companies do offer paid parental leave to be competitive and be a desirable place to work.

SICKNESS LEAVE

As with parental leave the U.S does not require employers to provide sick leave to their employees. If an employee does need to take time off due to illness, under the Family and Medical Leave Act (FMLA), some employees are entitled to up to 12 weeks unpaid sick leave. The same applies as with parental leave, the employer has at least 50 employees within a 75-mile radius, and that the employee has worked at least 1,250 hours over the past 12 months. Sickness leave is one of the more common benefits within the U.S that employers do offer.

SOCIAL SECURITY

Every employee and employer in the U.S must pay social security contributions. It is the employers responsibility to make the relevant deductions from an employees salary. The contribution rate is 6.2% despite an employee's earnings, this is capped at \$147,000.00 per annum on earnings. The same contribution rate applies to both employees and employers.

HEALTHCARE AND INSURANCE

Employers are not required to provide health insurance as a benefit to employees. However, the Affordable Care Act (ACA) will penalise some employers who fail to. Exceptions for health insurance by employers vary based on the size of the company. If a company employs more than 50 employees, they will be required to follow different rules and regulations compared to employers with less than 50 employees. The ACA have also introduced tax credits for small businesses to assist with the cost of health insurance.



HEALTHCARE AND INSURANCE CONT...



Medicaid is a national public health insurance program established in 1965 that is funded by income tax. If a person has an income below the federal poverty level, or a particular disability, they will be able to have their medical cover either fully or partially covered by the state government. This can include hospital cover, medicines, doctors appointments, and nursing home care. Medicare is for U.S residents over the age of 65, despite income. If an individual has paid Medicare taxes whilst working, they will qualify for Medicare. Medicare will still require a small contribution monthly but will provide large reductions in insurance premiums. Foreign workers are not able to access Medicare unless they have worked in the U.S for at least 10 years. It is strongly recommended that foreign employees take out private health insurance. Without insurance a hospital stay, or medical treatment can result in an extremely large bill, which many employees may struggle to repay.



EMPLOYMENT OF FOREIGN NATIONALS

Most foreign nationals will need a visa to work in the U.S. There are a variety of work visas for the U.S. The employer will need to file a petition with the U.S Citizenship and Immigration Services (USCIS). An approved petition must be part of the visa application. The most common work visa for the U.S is the H-1B visa for special occupation professionals. This visa is a non-immigrant visa which allows the applicant a temporary stay in the U.S for work purposes.

A non-immigrant visa is much simpler to obtain than an immigrant visa. An immigrant visa allows an applicant to migrate to the U.S and live there permanently. The USCIS do limit the number of H-1B visas issued each year. The visa is valid for 3 years and can be renewed once for an additional 3 years. Applicants will need to provide as a minimum proof of a job offer in the U.S, a copy of their CV showing relevant experience, a valid passport, and copies of degree certificates along with any other relevant certifications. The employer will need to provide information on the position such as job description, job title, salary, requirements, company details, companies federal tax ID number, and all relevant filing forms along with the fees.





SALARY AND SALARY TAXES

MINIMUM WAGE

The federal minimum wage is \$7.25 per hour (USD). Some states or cities may set this rate higher than the federal minimum wage.

INCOME TAX

The U.S tax year runs from January to December. It is the employer's responsibility to ensure taxes are paid from salaries before payments are made to employees. There are state taxes to pay which vary in each state as well as federal tax. Federal tax varies depending on the employee's personal situation, such as if they are single, married or jointly filing with a partner, or if they are head of their household. Below are tables as general guidance for federal tax, please note these may vary.



Single Person

Tax Payable	Salary
10%	Up to \$10,275
12%	\$10,276 - \$41,775
22%	\$41,776 - \$89,075
24%	\$89,076 - \$170,050
32%	\$170,051 - \$215,950
35%	\$215,951 - \$539,900
37%	\$539,901 +



INCOME TAX CONT...

Married or Jointly Filing

Tax Payable	Salary
10%	Up to \$20,550
12%	\$20,551 - \$83,550
22%	\$83,551 - \$178,150
24%	\$178,151 - \$340,100
32%	\$340,101 - \$431,900
35%	\$431,901 - \$647,850
37%	\$647,851 +

Head of Household

Tax Payable	Salary
10%	Up to \$14,650
12%	\$14,651 - \$55,900
22%	\$55,901 - \$89,050
24%	\$89,051 - \$170,050
32%	\$170,051 - \$215,950
35%	\$215,951 - \$539,900
37%	\$539,901 +



SALARY PAYMENTS

Most states in the U.S require employees to be paid on a fortnightly basis. However, some do allow monthly payments, whilst others require weekly payments.

SOCIAL SECURITY CONTRIBUTIONS

Social security in the U.S are the responsibility of the employer to deduct from an employee's salary before payment. Both the employer and employee are subject to social security contributions. Below are approximate contribution rates. Please note these can vary, and there maybe additional contributions depending on the state the employee is based in.

	Employer Percentage	Employee Percentage
FICA Social Security	6.2%	6.2%
FICA Medicare	1.45%	1.45%
FUTA (Federal Unemployment Tax Act)	0.6% - 6%	N/A
FUTA (additional tax for income over \$200,000.00)	N/A	0.9%

Social security is capped at \$147,000.00 annual earnings.

Federal unemployment tax rate is 6% with a taxable base of \$7,000. If a state operates their unemployment insurance programmes in compliance with federal law, the FUTA tax is reduced to 0.6%.



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