



State Bar of South Dakota

Law and the Workplace

Do I have a right to be hired?

No one has a right to be hired for any particular job. An employer may not refuse to hire you because of your race, creed, color, national origin, sex, religion, ancestry, age (if over 40), or disability (so long as none of these characteristics would prevent you from doing the essential functions of the job) or military status. If you believe an employer has refused to hire you because of race, sex, etc., for a job for which you are otherwise qualified, you should contact the South Dakota Division of Human Rights or a local attorney, and discuss the matter.

No person under the age of 16 may be hired for certain kinds of hazardous jobs, nor during school hours, nor after 7 p.m. without special permission. Usually children under 12 may not be employed anywhere except by their parents.

Both federal and state employers grant a statutory "veteran's preference" for government jobs. Both the South Dakota statute and the federal statute also give a veteran's preference to the spouses of deceased or disabled veterans. Public employers can be forced to give veteran's preference to qualified applicants.

Many employers participate in "affirmative action" programs. This means that, as to qualified candidates, the fact that one candidate is a minority person or female or disabled can be a "plus" factor to be considered in determining which person to hire. If an employer with whom you have applied for a job indicates that it has an affirmative action program and you believe you should have been given affirmative action preference, contact the Division of Human Rights in Pierre, or the Equal Employment Opportunity Commission in Denver, Colorado, or a local attorney to discuss the matter.

Under state and federal law, employers are required to make reasonable efforts to hire the disabled. While the employer is not required to make extensive changes in

his workplace, both government and private employers must reasonably accommodate disabled workers so they can do the essential functions of the job.

When you are hired, your employer has an obligation to require you to prove that you are an American citizen or that you are legally eligible to work in the United States.

How much must I be paid?

Both federal and state law provide for most jobs that an employee must be paid at least \$4.25 per hour. Further, in any given work week in which you work more than 40 hours, you must be paid at least one and one-half times your normal rate of pay for all hours you worked over 40 hours. There are some South Dakota employers who are not required to comply with the overtime law.

Minimum wage and maximum hours provisions apply to both government and private jobs. Babysitting and outside sales are not included under South Dakota law. Federal minimum wage law does not cover certain agricultural workers, professional, executive, and administrative employees, babysitters, outside salespeople, and some others. It is a criminal act under both state and federal law for an employer to intentionally fail or refuse to pay wages that are due, and an employer may be imprisoned or fined or both for such failure.

The employer may not discriminate in rates of pay on the basis of sex where the work has comparable requirements relating to skill, effort, and responsibility. Differences in pay rate