

**EMPLOYERS & EMPLOYEES IN KANSAS:**  
**Statutory Laws Impacting the Employment Relationship**  
**By Carol Ruth Bonebrake**

Governor Kathleen Sebelius created the Kansas Department of Labor (KDOL) in 2004 by signing Executive Order # 31. Before that time the Department was named the Kansas Department of Human Resources. KDOL administers the Unemployment Insurance Program and processes claims for unemployment benefits. KDOL also operates the State's Workers' Compensation System and Enforces Kansas employment standards including wage and hour laws and child labor laws. The chief counsel is A. J. Kotich.

When dealing with employment law issues, we so often focus on the federal statutes identified by enumerable acronyms such as ADA, FMLA, FLSA, ADEA, USERRA, COBRA, OSHA, INA and so on. There are, however, numerous Kansas statutes that impact the employment relationship. This article will provide an overview of those state statutes. The "question and answer" format will provide you with the kinds of questions typically asked, and citations to the Kansas Statutes Annotated where you can begin your legal research.

**DRESS CODE**

**APPLICANT:** They did not hire me as the receptionist because I wore jeans and a tank top to my interview. Can they do that?

**EMPLOYER:** Of course. The Kansas Act Against Discrimination<sup>1</sup> prohibits unlawful employment practices and unlawful discriminatory practices including, but not limited to, the hiring, reinstatement, or upgrading of employees, with or without back pay and the admission or restoration to membership in any labor organization. An unlawful discriminatory practice is "discrimination against persons, by reason of their race, religion, color, sex, disability, national origin or ancestry."<sup>2</sup>

An individual who wears jeans and a tank top to a job interview for a position of receptionist clearly shows poor judgment, a lack of understanding of appropriate work place attire, and can be disqualified from employment on that basis. Such a basis, is not unlawful discrimination.

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<sup>1</sup> K.S.A. 44-1001 et. seq.

<sup>2</sup> K.S.A. 44-1002(i)(1)

The Kansas Human Rights Commission has the authority to order and award damages for pain, suffering, and humiliation which are incidental to act of discrimination, except the award cannot exceed \$2,000.00.<sup>3</sup>

**APPLICANT:** But I have a friend who works at the company and he wears jeans to work every day.

**EMPLOYER:** Does he have a receptionist or other office type position?

**APPLICANT:** No.

**EMPLOYER:** The Kansas Act Against Discrimination prohibits an employer, because of race, religion, color, sex, disability, national origin, or ancestry to refuse to hire or employ a person, or to bar or discharge a person from employment, or otherwise discriminate against the person and compensation or in terms, conditions, or privileges of employment; to limit, segregate, separate, classify, or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact results in discrimination, segregation, or separation without a valid business necessity.<sup>4</sup> Allowing a mechanic or maintenance employee to wear jeans and to prohibit a receptionist from wearing jeans is simply a function of the position and does not constitute a discrimination in the terms or conditions of employment.

### HEIGHT RESTRICTIONS

**EMPLOYEE:** I am only five feet tall, does that prevent me from securing employment as a security officer for the hospital?

**EMPLOYER:** Yes. The Kansas statutes do not permit height restrictions on the hiring or employment of any person, "except that a minimum height restriction of five (5) feet two (2) inches may be imposed on the hiring or employment of any fireman, law enforcement, or security officer."<sup>5</sup>

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<sup>3</sup> K.S.A. 44-1003 & 44-1005(k)

<sup>4</sup> K.S.A. 44-1009(a)(1)

<sup>5</sup> K.S.A. 44-1110

## AGE DISCRIMINATION

**EMPLOYEE:** My little sister is brilliant. She finished high school at fifteen and completed all of the requirements to be a registered nurse at seventeen. She applied for a night position at the local long term care unit and they told her they would not hire her because she was not eighteen. Can they do that?

**EMPLOYER:** Yes. In Kansas, the Age Discrimination in Employment Act prohibits unlawful employment practices based on age. But “age” is defined as “an age of eighteen or more years.” Because your little sister is seventeen, she does not fall within the protected class, not withstanding her other qualifications for the position.<sup>6</sup>

## MILITARY REQUIREMENTS

**EMPLOYEE:** I have worked at the hospital for three years. I want to enlist in the Army and serve as an Army medic. If I do this, can the hospital fire me?

**EMPLOYER:** No. Kansas law prohibits an employer from discriminating against a member of the military with respect to employment or employment position or status, because of membership or service in the military.<sup>7</sup> If you enlist in the Army that does not disqualify you from continued employment. If the hospital were to discharge you because of your enlistment, you could file a civil action in your local district court, and if the court found a violation, you could be awarded actual damages, or \$500.00, whichever is greater for each violation. The court can also issue what is called an injunction or restraining order requiring the hospital to take action to stop the violation. If you were to prevail in district court, you could be awarded costs and attorney fees.

## RETALIATION

**EMPLOYEE:** If I report the hospital to the Kansas Department of Labor because I do not think I have been paid wages I am entitled to, or because I filed a complaint with the KHRC, can the hospital fire me?

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<sup>6</sup> K.S.A. 44-1111

<sup>7</sup> K.S.A. 44-1126

**EMPLOYER:** Yes, but you may be able to claim that the termination was in retaliation for your making a complaint. You may be discharged for matters not related to the complaint, however, the employer would have to show that your termination was not a pretext for retaliating against you for filing a complaint.<sup>8</sup>

### **BLACKLISTING LAW**

**EMPLOYEE:** I left my last job because I did not get along with my boss. She fired me after I refused to wear a pink polo shirt every Friday. Can she keep me from getting another job?

**EMPLOYER:** After an employer discharges someone, that employer “shall not prevent or attempt to prevent by word or writing of any kind whatsoever any such discharged employee from obtaining employment from any other person, company or corporation, except by furnishing in writing, on request, the cause of such discharge.”<sup>9</sup>

If the blacklisting law is violated, and found guilty of such violation, the employer may be subject to a fine of \$100.00 and thirty days in the county jail. The crime of blacklisting is a misdemeanor.

### **QUALIFIED REFERENCE IMMUNITY LAW**

**EMPLOYEE:** Can I sue my former supervisor for talking to the Director of Nursing at the hospital thirty miles down the road about my problems at work? I did not list that supervisor as a reference when I applied for my new job.

**EMPLOYER:** The supervisor has absolute immunity if, and only if, the following is disclosed:

1. Date of employment;
2. Pay level;
3. Job description and duties; and
4. Wage History

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<sup>8</sup> K.S.A. 44-1210(b)

<sup>9</sup> K.S.A. 44-117

The supervisor is also absolutely immuned if, and only if, the supervisor responds in writing to a written request about you, as a former employee when that request comes from a prospective employer, and so long as only the following information is disclosed (you would have had access to this information):

1. Written employee evaluations which were conducted before your separation of employment and which you were given a copy upon request; and
2. Whether you were voluntarily or involuntarily released and the reason for that separation.<sup>10</sup>

## UNEMPLOYMENT SECURITY LAW

### EMPLOYEE:

I learned in my business law class that in 1937 the legislature said that “economic insecurity, due to unemployment, is a serious menas to health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern, which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. This achievement of social security requires protection against the greatest hazard of our economic life. This could be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment, to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor-relief assistance. The legislature, therefore declares that in its considered judgment the public good and the general welfare business of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed.”<sup>11</sup>

If I lose my job for any reason can I collect unemployment benefits?

### EMPLOYER:

No. You can be disqualified from receiving benefits for numerous reasons, including:

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<sup>10</sup> K.S.A. 44-119a

<sup>11</sup> K.S.A 44-702

1. If you fail to accept any offer of suitable work, or fail to apply for suitable work to which you were referred by the Secretary of Labor; or
2. You failed to actively engage in seeking work.<sup>12</sup>

You can also be disqualified if you:

1. Left work voluntarily without good cause attributable to the work or the employer. If you fail to go back to work after your approved personal or medical leave has expired, this failure can be considered a voluntary resignation;<sup>13</sup>
2. If you were discharged for misconduct which is defined as: “a violation of a duty or obligation reasonably owed to the employer as a condition of employment.”
3. “Gross misconduct” is “conduct evincing extreme, willful, or wanton misconduct.” If you fail to notify your employer that you will be absent, this is considered evidence of a violation of duty or obligation reasonable owed the employer as a condition of employment.<sup>14</sup>

Conclusive evidence of misconduct includes use of, or impairment caused by alcoholic liquor, cereal malt beverage, or a non-prescribed controlled substance while working, and the possession of alcoholic liquor, cereal malt beverage, or a non-prescribed controlled substance by an employee while working shall be prima facie evidence of conduct which is in violation of a duty or obligation reasonable owed to the employer as a condition of employment.<sup>15</sup>

Absenteeism, if it meets the statutory requirements, is deemed misconduct.<sup>16</sup>

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<sup>12</sup> K.S.A. 44-704(b)

<sup>13</sup> K.S.A. 44-706(a)

<sup>14</sup> K.S.A. 44-706(b)(1)

<sup>15</sup> K.S.A. 44-706(b)(2)(A)

<sup>16</sup> K.S.A. 44-706(b)(3)

## EMPLOYMENT SECURITY INSURANCE ACT FOR DOMESTIC VIOLENCE SURVIVORS

**EMPLOYEE:** I had to leave work in the middle of the night because I was afraid my boyfriend would come home and beat me up again. I was in hiding for two days, but was able to call my supervisor on the third day when I knew I was safely away and he could not find me. I am not going to be able to come back to work anytime soon, although I would like to return to the community at sometime in the future. Am I eligible for unemployment benefits?

**EMPLOYER:** Yes.<sup>17</sup>

### WAGE REQUIREMENTS

**EMPLOYEE:** My husband and I are both aviation mechanics. We met in school and graduated at the same time. We are both starting our careers. We are willing to relocate and have both had interviews with a newly remodeled hospital in southwest Kansas. My husband was offered \$22.50 an hour and I was offered \$20.00 per hour. Both positions have the same job description and both are on the day shift. I cannot figure out why the starting wage is different.

**EMPLOYER:** Kansas has an “equal pay for equal work” statute.<sup>18</sup> “[N]o employer having employees of both sexes shall discriminate, within any establishment in which such employees are employed, between employees on basis of sex by paying wages to employees in such establishment at a rate less than the rate of wages paid to employees of the opposite sex in such establishment for equal work on jobs, the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions. . . .”

Now, these provisions do not apply if the hospital has 1) a seniority system; 2) a merit system; 3) a system which measures earnings by quantity or quality of production; or 4) a differential based on fact other than sex. If your husband was working the night shift, this could account for his higher rate of pay, i.e., a shift differential. If it is determined that the hospital is in violation of this law, your husband’s pay would not be reduced because the law prohibits that.

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<sup>17</sup> K.S.A. 44-706(a)(12) & K.S.A. 44-760 et. seq.

<sup>18</sup> K.S.A. 44-1205

Thus, as a practical matter, you would get a raise.

If this provision is violated, a fine between \$250.00 and \$1,000.00 may be imposed.<sup>19</sup>

### **WAGE PAYMENT ACT**

**EMPLOYEE:** The hospital has decided to change the payroll schedule to six times a year. The plan is to pay employees on March 1, (for January and February); May 1, (for March and April); June 1, (for April and May); August 1, (for June and July); October 1, (for August and September); and December 31<sup>st</sup>, (for November and December). Is this lawful?

**EMPLOYER:** No. The Wage Payment Act requires the employer to pay wages that are due at least once a month, and on regular pay days that have been designated in advance.<sup>20</sup>

If you are not paid on the next regular pay day, then the employer could have liability under the Wage Payment Act.<sup>21</sup>

The employer could be required to pay the wages due and penalty in a fixed amount for each day (except Sunday and legal holidays) upon which such failure can continue after the 8<sup>th</sup> day after the day upon which payment is required, or in an amount equal to one hundred percent of the unpaid wages, whichever is less.<sup>22</sup>

### **WORKER'S COMPENSATION**

**EMPLOYEE:** I went to my cousin's bachelorette party a couple of nights ago and arrived at work the next day late, and tripped over the office water cooler and landed on the floor twisting my ankle. Someone ratted on me and I got popped for a UA. I have not smoked marijuana in three years, but I did at the bachelorette party. Is the company required to pay for my medical bills because of the injury to my ankle?

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<sup>19</sup> K.S.A. 44-1210(a)

<sup>20</sup> K.S.A. 44-315

<sup>21</sup> K.S.A. 44-315

<sup>22</sup> K.S.A. 44-501(d)(2)

**EMPLOYER:** No. The employer is not liable under the Worker's Compensation Act because the ankle injury was contributed to by your use of the marijuana, which is specifically listed in the statute.<sup>23</sup>

### CHILD LABOR LAWS

**APPLICANT:** I am seventeen and just got my GED. I want to apply for a position with your company as a highway construction, heavy equipment operator. I used to work on my uncle's farm in summers, around farm machinery and equipment. I am in today to pick up an application.

**EMPLOYER:** Kansas law will not let us hire young people for hazardous occupation if they are under eighteen years of age.<sup>24</sup>

**APPLICANT:** My girlfriend is fifteen and we saw your ad for office help. Could I pick up an application for her?

**EMPLOYER:** The laws require us to limit the working hours for fifteen year olds. The position that we have open is a full-time position from 7:00 am. To 3:00 p.m. We do not have any part-time office positions available.<sup>25</sup>

Employment law situations are very fact specific. In order to apply the law to the facts, obtaining detailed chronological information is very important. Additionally, we must always remember the privacy and confidentiality that cloaks personnel information.

Additional Resources are available on the Internet:

1. Kansas Department of Labor [www.dol.ks.gov](http://www.dol.ks.gov)
2. Kansas Human Rights Commission [www.khrc.net](http://www.khrc.net)
3. U.S. Department of Labor [www.dol.gov](http://www.dol.gov)
4. U.S. Department of Labor Compliance Guide  
[www.dol.gov/compliance/guide/index.htm](http://www.dol.gov/compliance/guide/index.htm)
5. Equal Employment Opportunity Commission [www.eeoc.gov](http://www.eeoc.gov)
6. Employer Support of the Guard & Reserve [www.esgr.org](http://www.esgr.org)

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<sup>23</sup> K.S.A. 44-501(d)(2)

<sup>24</sup> K.S.A. 38-602 & K.S.A. 38-603

<sup>25</sup> K.S.A. 38-602 & K.S.A. 38-603









