

South Dakota: JURY DUTY

Summary

- Employers in South Dakota must excuse employees from work to serve on a jury.
- All employees in South Dakota may take time off from work to respond to a jury duty summons. .
- Employers do not have to compensate an employee for his or her time spent on jury duty.
- South Dakota law protects an employee's job when the employee serves on a jury.

Employers Obligated to Provide Leave

All employers in South Dakota must provide jury duty leave to employees.

Employees Qualified for the Leave

All employees in South Dakota may take time off from work to respond to a jury duty summons.

Compensation During Leave

An employer is *not* required to compensate an employee for time spent on jury service. Temporary jury duty leaves may be paid or unpaid, at the discretion of the employer.

While not mandated to do so, many employers have jury duty leave policies that pay employees called to jury or witness duty. In deciding compensation issues, an employer must consider the exempt and nonexempt status of employees.

Exempt Employees

An employee who is *exempt* under the Fair Labor Standards Act (and therefore not entitled to overtime) must be paid for the whole week for any workweek in which he or she served as a juror or witness, but also performed any actual work. The employer may offset any amount received by an exempt employee as jury fees or witness fees for a particular week against the salary due for that week. The employee need not be paid for any workweek during which he or she performs no work; for example, when an employee is on jury duty for an entire workweek.

Nonexempt Employees

The Fair Labor Standards Act does not require employers to pay *nonexempt* employees (typically, hourly workers who are entitled to overtime pay for working more than 40 hours in a workweek) for time spent away from work because of jury or witness

obligations. Employers may elect to pay such employees, but deduct the amount paid by the court from any compensation paid. This practice is consistent with the philosophy behind the jury duty protection laws, which are intended to encourage individuals to perform their civic duty. However, because it is possible that an employee on jury duty may become involved in a long trial, written company policies should specify that any pay that is granted will be calculated as regular base pay only (no overtime) and will be limited to some finite period.

If the employer does not intend to pay employees for lengthy jury service, there must be a written policy in place informing employees of that fact (i.e., an employer's policy can indicate that after a certain length of time, the employee's jury service will no longer be paid leave). Failure to specify such limitation of payment could result in having to pay the employee for the entire length of his or her service.

Prohibited Actions

An employer may not terminate or suspend an employee because the employee served on a jury. An employee returning from jury service is entitled to the same job, pay and seniority as he or she held before performing jury duty. +*S.D. Codified Laws § 16-13-41.1*.

Violation of this law is a Class 2 misdemeanor punishable by 30 days' imprisonment in a county jail or a \$500 fine, or both. +*S.D. Codified Laws § 16-13-41.1*; +*S.D. Codified Laws § 22-6-2*.