

Louisiana Employment Law Letter

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- The good, the bad, and the ugly
- The new kid on the block
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- Supreme Court gives employers an unexpected present

LEGISLATION

A tale of two houses: 2001 legislative session continues

In our last issue, we reported on a number of bills that could affect your workplace if they become law. As promised, we've tracked the progress (or lack thereof) of those bills during the past month. The session ends June 16, so we'll feature the bills that pass and explain how they'll affect your workplace in our next issue. In the meantime, here's what's happened so far.

The best of times

One of the two bills that signaled the best of times for employers fell short of the votes needed to get to the governor for his approval. House Bill (HB) 1312, which would prohibit local governments from requiring businesses to become or operate as a union shop or to remain neutral to union organizing efforts to bid on public works projects, barely failed to pass in the House.

But another bill, HB 1740, which also would prohibit local governments from requiring businesses to operate under union terms or to remain neutral to union organizing efforts in exchange for public services typically available to all citizens, passed the House by a vote of 60-40 and is now under consideration in the Senate.

HB 1312 (Scalise); HB 1740 (Scalise).

The worst of times

Several bills aim to expand the universe of protected groups of employees for the purpose of Louisiana's employment discrimination law and expose you to a new type of employment discrimination claim. Senate Bill (SB) 862, which would make it unlawful for any public or private employer to discriminate against applicants or employees because of actual or perceived sexual orientation or gender identity, failed to pass the Senate. But SB 1083 and SB 1085, which are similar, have been set for hearings before the Senate Labor and Industrial Relations Committee. Both bills would apply only to employers with more than 15 full-time employees, except employees of federal agencies and any job within a religious organization that pertains solely to nonprofit activities exempt from Section 511(a) of the Internal Revenue Code.

The proposed laws would not require you to justify neutral employment policies or practices that have a disparate impact on such individuals or to adopt quotas or give preferential treatment to them. Use of statistical evidence of the sexual orientation or gender identity of your workforce would be prohibited. The bills also propose a higher burden of proof -- clear and convincing evidence -- than is required for other types of employment discrimination claims.

SB 862 (Cravins and Irons); SB 1083 (Dean); and SB 1085 (Dean).

The age of wisdom

SB 332, which would give you a way to get back at employees who have stolen money from you, has been set for a hearing before the Senate Labor and Industrial Relations Committee. Louisiana law currently prohibits you from assessing fines against your employees or making deductions from their wages unless they willfully or negligently damage your property, goods, or works. If an employee does so, the fine or deduction cannot exceed the amount of the actual damage. Moreover, you must have a prior written authorization or signed agreement with your employee that expresses his understanding that fines or deductions will occur under these kinds of circumstances. SB 332 would add another exception to the general law prohibiting fines and deductions from employees' wages for cases in which an employee is convicted of or has pleaded guilty to the crime of theft of employer funds.

SB 332 (Michot).

The age of foolishness

HB 1586, which would make it possible for private security companies to recoup any licensing and training fees up to \$200 paid on behalf of any security officer who voluntarily terminates his employment within 12 months of hire, has not made any progress since our last newsletter. It has been returned to the calendar and is still subject to consideration, so we'll continue to monitor this bill for further action.

HB 1586 (Pinac).

The epoch of belief

Several bills that propose amendments to Louisiana's workers' compensation law to modify the penalties for providing false information in connection with a workers' compensation claim are still alive in the Legislature. HB 1802 would require an employee to make restitution of any benefits received if he provides false information regarding a workers' compensation claim. The bill also would require any employer that provides false information to pay a fine to the employee, rather than the state.

HB 1473 would eliminate employer immunity from a lawsuit in state court, one of your primary benefits under the workers' compensation law, if you provide false information regarding an employee's claim. Both of these bills have been set for hearing before the House Labor and Industrial Relations Committee. HB 1093, which would make an employee's forfeiture of benefits for providing false information permissive rather than mandatory, was passed in the House and has been referred to the Senate Labor and Industrial Relations Committee.

HB 1802 (Scalise); HB 1473 (Townsend); HB 1093 (Devillier).

The epoch of incredulity

The information that can be derived from human DNA has caused concern about the potential for employers to obtain and misuse information not only among employee rights advocates but also among Louisiana's legislators. Unlike many other states, Louisiana considered legislation of its own in this regard, and it was passed in the House and the Senate without opposition. The bill has been enrolled, which means it is now in final form and will be submitted to the governor for his approval or veto. If approved, SB 651 will limit genetic testing in employment and prohibit disclosure of an employee's genetic information, except under specified circumstances, and prohibit genetic discrimination in employment.

SB 651 (Hines).

The season of light

The light at the end of the tunnel is still in view but not getting any closer. HB 1295, which proposes to give employers a break by extending the three-day period for paying discharged employees' wages to "the next regularly scheduled compensation run [*i.e.*, payday] for the employer," is still pending before the Senate Labor and Industrial Relations Committee.

HB 1295 (Stelly).

The season of darkness

There's been no change in the status of HB 313, which would expose employers to punitive damages under Louisiana's employment discrimination law to the same extent as under federal employment discrimination laws. Currently, the Louisiana employment discrimination law does not permit employees to recover punitive damages. This bill, however, would change Louisiana law to expose employers to punitive damages if you employ certain numbers of employees:

- a. \$50,000 if you have between 15 and 100 employees;
- b. \$100,000 if you have between 101 and 200 employees;
- c. \$200,000 if you have between 201 and 500 employees; and
- d. \$300,000 if you have 501 or more employees.

HB No. 313 (Richmond). This bill could significantly affect employers, so we'll be watching it closely until June 16.

The spring of hope

The bill that could help employers that are sued by their employees for damages arising from their own misdeeds has been set for hearing before the House Civil Law Committee. HB 238 would apply to any party, including a current or former employee, who files a lawsuit seeking to recover money damages for lost wages or earning capacity. It would require the employee to prove that she reported such earnings on her tax return as well as to any governmental agency from which she receives need-based benefits, such as welfare, to recover any lost wages awarded in a lawsuit. If the employee didn't pay income taxes on her earnings or didn't report her earnings to any governmental agency to avoid disqualification for need-based benefits, she cannot present damages for lost earnings in a lawsuit.

HB 238 (Waddell).

The winter of despair

The House has passed a couple of bills that would amend Louisiana's workers' compensation law to permit penalties against employers and insurers that discontinue the payment of benefits for arbitrary or capricious reasons or without probable cause. Under current law, employers and insurers must pay employees' attorneys' fees if they discontinue benefits for such reasons. HB 597 and HB 1065 also would subject employers and insurers to an additional penalty in the amount of 12 percent of any unpaid compensation or medical benefits or \$50 for each calendar day they remain unpaid, whichever is greater. HB 597 was reported favorably from the Senate Labor and Industrial Relations Committee but has been returned to the calendar and is subject to reconsideration. HB 1065, on the other hand, has been deferred by the House Labor and Industrial Relations Committee and very well may not survive this session.

HB 597 (Bowler); HB 1065 (Murray).

Everything before us

Things look good for regulated employment services, which no longer will be regulated if HB 798 becomes law. HB 798 sailed through the House without opposition and has been set for hearing before the Senate Labor and Industrial Relations Committee. If it becomes law, the bill will eliminate the licensing requirements and fees for "employment services" as well as the penalties for failing to comply with those requirements.

HB 798 (Donelan).

Nothing before us

There's been no change in the status of HB 1048, which seeks to prohibit employees from proceeding directly to court with a workers' compensation retaliation claim and, instead, require them to use the administrative process set up to handle workers' compensation claims generally. Under current law, workers' compensation judges have exclusive jurisdiction over claims related to workers' compensation coverage, overpayment of benefits, employer credits, and indemnification and contribution. HB 1048 would add discrimination and retaliation claims arising from an employee's workers' compensation claim.

HB 1048 (Devallier).

Get involved: Support the bills you like; stop the ones you don't!

You may direct comments or questions about any of the bills summarized above by contacting your legislators:

- Members of the House of Representatives may be reached by calling (225) 342-6945, e-mailing webreps@legis.state.la.us, or writing to the Louisiana State House of Representatives, P.O. Box 94062, Baton Rouge, LA 70804.
- Members of the Senate may be reached by calling (225) 342-2040, e-mailing websen@legis.state.la.us, or writing to the Louisiana State Senate, P.O. Box 94062, Baton Rouge, LA 70804.

We will continue to monitor the status of these and any other bills of interest to employers. In the meantime, you can check the status of any bill by calling the PULS line at (225) 342-2456 or (800) 256-3793.

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