

# Louisiana Employment Law Letter

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## Highlights

- Winnas and loozas: Louisiana Legislature ends on good note for employers
- Employment contracts: Read the fine print
- What you know won't hurt you
- Develop a positive employee relations program: Supervisors make the difference
- High court calls 'strike three' in labor dispute
- All's fair in love and war

## LEGISLATION

### Winnas and loozas: Louisiana Legislature ends on good note for employers

*The 2001 regular legislative session ended on June 16, 2001. Overall, the "tale of two houses" ended pretty well for employers. Many of the bills we were following sought to impose greater restrictions and penalties on employers for a variety of reasons. We are pleased to report that only one of those bills, the one that prohibits genetic discrimination, became law. We're also pleased to report that the most onerous of the antiemployer bills -- the one that would have imposed punitive damages for violating Louisiana's employment discrimination law -- failed to pass. On the positive side, three bills that favor employers passed and have been sent to the governor for his signature. We begin our final report on the 2001 regular legislative session with a summary of the bills that passed and how they will affect your workplace.*

#### ***Stopping the insanity once and for all***

Finally, the Legislature has decided to give you a uniform rule for the time within which you must provide final paychecks to former employees. Prior law applied a different time for providing a final paycheck to a former employee depending on whether her employment ended voluntarily or involuntarily -- up to 15 days for voluntary quits and only 72 hours if an employee was fired or laid off. The new law simply requires you to pay any separated employee her final paycheck "on or before the next regular payday or no later than fifteen days following the date of" discharge or resignation.

### ***Reaffirming Louisiana's right-to-work law***

The Legislature reaffirmed Louisiana's right-to-work law by passing a bill that prohibits local government officials from requiring you to sign so-called union neutrality contracts, or "labor peace agreements," in exchange for public services such as permitting, licensing, or approval of zoning variances. The new law declares that it is the "public policy of this State" that employees freely exercise an informed choice concerning whether they wish to be represented by labor organizations; this free and informed choice by employees is achieved by making sure employers have the full freedom to take any action permitted under federal labor law, including the right to oppose union organizing.

The new law also declares that it is contrary to Louisiana's constitution for local governments to interfere with relationships between private parties such as employers, employees, and unions. The new law will prohibit any governmental body from passing "any law, ordinance, or regulation" or imposing "any contractual, zoning, permitting, licensing, or other condition" on the rights of both employers and employees to engage in any action allowed by federal labor law. These rights also include the right of employees not to be forced to join a labor union as a condition of employment or to have their interests represented by a union they don't want. The scope of the new law specifically will prohibit local governmental officials and agencies from:

- conditioning any purchase, sale, lease, or other business or commercial transaction between employers on the waiver or limitation of any right the employers may have under the federal labor laws;
- conditioning any regulatory, zoning, permitting, licensing, or other governmental requirement for any employer on the waiver or limitation of any right the employer may have under the federal labor laws;
- enacting any ordinance or regulation or taking other action that waives or limits any right an employer may have under the federal labor laws; and
- conditioning the right of any employer to deal with another employer on the waiver or limitation of any right either employer may have under the federal labor laws.

The new law also will give employers that have been aggrieved by any violation of the law the right to file suit to obtain a court order to stop local governmental officials from violating the law.

### ***Getting back what is rightfully yours***

The Legislature finally has recognized that employers that have had the misfortune of hiring employees with "sticky fingers" are often without any effective method of retrieving what is rightfully theirs. So it carved out an exception to the Louisiana statute that prohibits you from assessing fines against or making deductions from an employee's wages in cases in which an employee "is convicted or has pleaded guilty to the crime of theft of employer funds." Although the new law will allow you to withhold the amount of stolen funds from an employee's paycheck, it doesn't seem to be of much practical use because you'll have to wait for your employee to plead guilty or be convicted. And you probably will have fired the employee long before that happens.

### *Keeping up with technology*

A new law that will take effect on August 15, 2001, will prohibit discrimination against employees on the basis of their genetic composition. The new law will prohibit employers, employment agencies, and labor organizations from discharging, failing or refusing to hire, limiting, segregating, classifying, or otherwise discriminating against an employee with respect to her compensation, terms, conditions, or privileges of employment on the basis of her "protected genetic information" or because of "information about a request for or the receipt of genetic services" by the employee.

"Genetic services" means health services, including genetic tests provided to obtain, assess, or interpret genetic information for diagnostic or therapeutic purposes or for genetic education or counseling. The new law also defines "genetic test" to include "the analysis of human DNA, RNA, chromosomes, and those proteins and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes," but it provides that the test must be generally accepted in the scientific and medical communities as being able to determine the presence, absence, or mutation of a gene or chromosome to meet the definition of "genetic test." The new law will also prohibit employers, employment agencies, and labor organizations from disclosing such information, except:

- to the employee on request;
- to an occupational or health care researcher for specific research authorized under federal law;
- if required under federal or state law, with specific exceptions for notice to the employee; and
- to the governmental body investigating a violation of the new law.

Finally, such information must be kept confidential by employers, employment agencies, and labor unions and must be maintained separate and apart from an employee's personnel file.

An exception to the prohibition on discrimination applies when an employer, employment agency, or labor organization extends an offer of employment to an individual that is conditioned on receipt of genetic information if:

- the information obtained is to be used exclusively to assess whether further medical evaluation is needed to diagnose a current disease, medical condition, or disorder;
- such a current disease, medical condition, or disorder could prevent the applicant or employee from performing the essential functions of the position held or desired; and
- the information will not be disclosed to persons other than medical personnel involved in or responsible for assessing whether further medical evaluation is needed to diagnose a current disease, medical condition, or disorder.

The law provides another exception when the information is obtained for the purpose of genetic or health care services provided by the employer, employment agency, or labor organization

when the employee provides prior knowing, voluntary, and written authorization and the person performing the services does not disclose the information except under certain limited circumstances defined in the new law.

Needless to say, it's going to take some time for employers, lawyers, and the courts to figure out this new law. In the meantime, it's going to cause us all plenty of headaches.

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