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EMPLOYERS STATE LAW ALERT

Summarizing Significant New Employment Laws & Regs in All 50 States

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Unions

Union friends and foes alike seeing ups and downs across the nation

by Tammy Binford

Recent history has been a mixed bag for both proponents and opponents of labor unions.

In April 2015, unions scored a major victory when the National Labor Relations Board's (NLRB) "quickie election" rule went into effect. They cheered again in June 2016 when that rule survived a court challenge from employers that claimed the rule stacked the deck in favor of unions by depriving employers of the time needed to fight union campaigns.

Unions appeared to score another significant victory when the U.S. Department of Labor (DOL) issued a new "persuader rule" that was supposed to take effect on July 1, 2016. Instead, union foes were the ones cheering when a federal district court in Texas issued an injunction with nationwide effect that blocked the rule just a few days before the implementation date.

The persuader rule defeat followed a victory for unions in March 2016 when the U.S. Supreme Court reached a 4-4 deadlock in *Friedrichs v. California.* That ruling left intact a legal precedent allowing "agency shop" arrangements in the public sector. In an agency shop, nonunion members must pay union fees used for collective bargaining but not fees that go toward political activities. Many observers were expecting the Court to rule 5-4 to overturn the precedent, thereby hampering union efforts to collect fees. But with the death of Justice Antonin Scalia the month before the ruling, the Court deadlocked, saving previous precedent.

Shortly before the *Friedrichs* decision, union advocates suffered a blow when another state was added to the ranks of those with some version of a right-to-work law. West Virginia's new law, passed in February 2016 over the governor's veto, brings the number of states with right-to-work provisions to 26.

Right-to-work laws

Passage of right-to-work laws, which ensure that workers can't be compelled to join unions as a requirement of their jobs, has slowed in recent years. Some right-to-work states address the issue through legislation, while others adopt amendments to their constitutions, and some have both statutes and constitutional amendments. Many states have had right-to-work laws since the 1940s.

Here are the states in addition to West Virginia with right-to-work statutes and the year they were enacted, according to information from the National Conference of State Legislatures (NCSL): Alabama (1953), Arizona (1947), Arkansas (1947), Florida (1943), Georgia (1947), Idaho (1985), Indiana (2012), Iowa (1947), Louisiana (1976), Michigan (2012), Mississippi

(continued on pg. 2)

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Alan King, Editor • Brad Forrister, VP Content • With contributions from members of the Employers Counsel Network

(1954), Nebraska (1947), Nevada (1951), North Carolina (1947), North Dakota (1947), Oklahoma (2001), South Carolina (1954), South Dakota (1947), Tennessee (1947), Texas (1993), Utah (1955), Virginia (1947), Wisconsin (2015), and Wyoming (1963).

Here are the states with constitutional amendments and the year they were adopted: Arizona (1946), Arkansas (1944), Florida (1968), Kansas (1958), Mississippi (1960), Nebraska (1946), Nevada (1952), North Dakota (1948), Oklahoma (2001), and South Dakota (1946).

The NCSL data show that Arizona, Arkansas, Florida, Mississippi, Nebraska, Nevada, North Dakota, Oklahoma, and South Dakota have both statutes and constitutional amendments.

Union membership

The DOL's Bureau of Labor Statistics (BLS) released information in January showing the number of union members in the country. The union membership rate for 2015 stood at 11.1%, unchanged from 2014. The number of wage and salary workers belonging to unions was 14.8 million in 2015. In 1983, the first year with comparable union data, the union membership rate was 20.1%, and there were 17.7 million union workers, according to the BLS.

The latest statistics show that public-sector workers had the highest union membership rate in 2015, a rate of 35.2%. That's more than five times higher than the 6.7% rate for private-sector workers.

The BLS report shows that workers in protective service occupations and in education, training, and library occupations had the highest unionization rates—36.35 and 35.5%, respectively.

The BLS information also shows that New York continued to have the highest union membership rate in 2015, with 24.7%. South Carolina had the lowest rate at 2.1%.

Recent developments

Union proponents hope the NLRB's new election rule will help them boost their numbers. The rule, dubbed the "quickie" or "ambush" election rule by its detractors, shortens the time employers have to respond to union election campaigns.

Foes of the rule filed a legal challenge arguing that it unlawfully limits employers' rights during union campaigns and violates employees' privacy. That challenge failed in June when the U.S. 5th Circuit Court of Appeals issued an opinion stating that the NLRB "acted rationally and in furtherance of its congressional mandate in adopting the rule."

In addition to shortening the union representation election process, union interests were hoping to get a boost from the new persuader rule, which was scheduled to take effect July 1. A court challenge from union foes was successful in stopping the persuader rule at least temporarily, however.

A federal district judge in Texas issued a preliminary injunction on June 27 prohibiting enforcement pending final resolution of a lawsuit challenging the persuader rule's constitutionality.

The new rule from the DOL would have increased reporting requirements on employers trying to persuade employees not to unionize. Under the rule, employers and their attorneys and consultants would have to file with the DOL for public disclosure all agreements and payments to attorneys and consultants for providing advice, counter-organizational campaign training, and assistance on maintaining nonunion status. The old rule made such attorney and consultant assistance exempt from reporting under the "legal advice" exception of the Labor Management Reporting and Disclosure Act of 1959 (LMRDA).

If the new rule is eventually allowed to take effect, attorneys, consultants, and employers will have to report activity meant to dissuade employees from unionizing, activity including:

- Drafting union campaign literature, speeches, audiovisual presentations, or website content;
- Drafting counter-organizational talks or talking points for supervisors who meet with employees in groups or individually;
- Meeting with supervisors or management to oversee or develop counter-organizational strategy;
- Training supervisors in counter-organizational conduct;
- Coordinating or planning counter-organizational campaigns;
- Establishing employer policies to inhibit union activity; and
- Planning personnel actions or discipline to affect union activity.

Statutes

Colorado

Employee Discrimination

Pregnancy and related conditions

The law makes it an unfair employment practice for an employer to fail to provide reasonable accommodations for an applicant for employment or an employee for conditions related to pregnancy or childbirth. It requires each employer to provide employees with a notice of rights regarding the unfair employment practice.

Cite: 2016 CO HB1438 (7 pages)

Enacted: 6/1/2016

Effective: 8/10/2016

www.leg.state.co.us/clics/clics2016a/csl.nsf/fsbillcont3/F3CAFE18234A916787257F240063FA9F?open&file=1438_ren.pdf

Employment Records

Employee access to employment records

The law allows a current or former employee at least annually to request that his employer permit him to inspect or

receive copies of his personnel file at the employer's office and at a time convenient to both parties. Current or former employees are required to pay reasonable costs for duplication of the records.

Cite: 2016 CO HB1423 (4 pages)

Enacted: 6/10/2016

Effective: 8/10/2016

www.leg.state.co.us/clics/clics2016a/csl.nsf/fsbillcont3/C8B63177745CD25187257F8500596C4D?open&file=1432_signed.pdf

Immigration

Eliminates some E-Verify requirements

The law eliminates current employment verification standards that require each employer in Colorado to attest that it has verified the legal work status of each employee, has not altered or falsified employees' identification documents, and has not knowingly hired an unauthorized alien. It also eliminates standards that fine an employer for failing to provide documentation or for providing fraudulent documentation.

Cite: 2016 CO HB1114 (4 pages)

Enacted: 6/8/2016

Effective: 8/10/2016

www.leg.state.co.us/clics/clics2016a/csl.nsf/fsbillcont3/0EA666E1C2FAC88887257F2400642F9B?open&file=1114_signed.pdf

Workers' Compensation

Admission of liability

This law requires that any admission of liability in a workers' compensation case that purports to reduce the amount of compensation normally provided by law must include a statement by a representative of the employer listing the specific facts on which the reduction is based and permitting a party to request an expedited hearing on the issue of whether the reduction may be taken. It extends the time in which an expedited hearing must be held from 40 to 60 days and permits a party to request an expedited hearing on the issue of whether a compliant designated medical provider list was provided.

Cite: 2016 CO SB217 (5 pages)

Enacted: 6/10/2016

Effective: 7/1/2016

www.leg.state.co.us/clics/clics2016a/csl.nsf/fsbillcont3/764A77AEC379779C87257FAB00010AF1?open&file=217_signed.pdf

Connecticut

Background Checks

Prohibits employers from inquiring about criminal history

This law prohibits employers from asking about a prospective employee's prior arrests, criminal charges, or convictions on an initial employment application unless it must do so under state or federal law or the prospective employee is applying for a position for which it must obtain a security or fidelity bond or equivalent bond. The law allows a prospective employee to file a complaint with the labor commissioner alleging a violation of this prohibition and subjects violators to a $300-per-violation civil penalty imposed by the Labor Department. It also allows someone to file a complaint with the commissioner alleging an employer's violation of existing law on employment-related criminal record checks. Finally, the law establishes the Fair Chance Employment Task Force to study issues that include the employment opportunities available to people with criminal histories.

Cite: 2016 CT HB5237, CT Pub. Ch. 16-83 (7 pages)

Enacted: 6/1/2016

Effective: 1/1/2017

https://www.cga.ct.gov/2016/ACT/pa/pdf/2016PA-00083-R00HB-05237-PA.pdf

Employee Benefits

Creates the Connecticut Retirement Security Authority

This law creates the Connecticut Retirement Security Authority to establish a program for Roth individual retirement accounts (IRAs) for eligible private-sector employees, who are automatically enrolled in the plan unless they opt out. The authority is administered by a nine-member Connecticut Retirement Security Authority Board, which the bill establishes as a quasi-public authority under state law. The law's requirements apply to all "qualified employers," defined as private-sector employers that employ at least five people, each of whom was paid at least $5,000 in wages in the preceding calendar year. "Covered employees" are those who have worked for a qualified employer for a minimum of 120 days and are at least age 19 years old.

Qualified employers must automatically enroll each covered employee in the program no later than 60 days after the employers provide the employee with the informational material on the program the bill requires. If the employee does not affirmatively opt in, the employer must enroll the employee with a contribution of at least three percent but no more than six percent of her taxable wages. A covered employee may opt out of the program by electing a contribution level of zero. The law also contains penalties for employers that fail to remit contributions or that fail to enroll employees.

Cite: 2016 CT HB5591, CT Pub. Ch. 16-29 (29 pages)

Enacted: 5/27/2016

Effective: 5/27/2016

https://www.cga.ct.gov/2016/ACT/pa/pdf/2016PA-00029-R00HB-05591-PA.pdf

Employee Leave

Amends Connecticut Family and Medical Leave Act

This law requires certain private employers and the state to allow their employees to take unpaid time off when federal regulations determine a need exists arising from

the employee's spouse, son or daughter, or parent being on active duty or notified of an impending call or order to active duty in the armed forces. Under the law, in such circumstances, private employees may take up to 16 work-weeks of unpaid time off during any 24-month period, and state employees may take up to 24 weeks within a two-year period.

Cite: 2016 CT SB262, CT Pub. Ch. 16-195 (1 page)

Enacted: 6/7/2016

Effective: 6/7/2016

https://www.cga.ct.gov/2016/ACT/pa/2016PA-00195-R00SB-00262-PA.htm

Unemployment Compensation

Changes to unemployment compensation law

This law makes various changes to the state's unemployment compensation laws. The law allows the Department of Labor to deliver certain unemployment notices and decisions by means other than the mail. It requires the period in which a party can appeal a decision to start when the decision is "provided," rather than mailed, to the party. It allows the labor commissioner to prescribe different ways, other than a hearing, for employers and claimants to present their evidence and testimony in certain unemployment proceedings. It also allows employers to pay their employees biweekly without first obtaining a waiver from the department. In addition, it eliminates a requirement that the labor commissioner adopt regulations that specify the circumstances in which an employer can require an employee to submit to a urinalysis drug test because of a reasonable suspicion that the employee is under the influence of drugs or alcohol.

Cite: 2016 CT SB220, CT Pub. Ch. 16-169 (46 pages)

Enacted: 6/6/2016

Effective: 10/1/2016

https://www.cga.ct.gov/2016/ACT/pa/pdf/2016PA-00169-R00SB-00220-PA.pdf

Wages

Authorizes employer use of payroll cards

This law allows employers to pay their employees through payroll cards under certain conditions. An employee must voluntarily and expressly authorize, in writing or electronically, that he wishes to be paid with a card without any intimidation, coercion, or fear of discharge or reprisal from the employer. The law provides that no employer can require payment through a card as a condition of employment or for receiving any benefits or other type of remuneration. It requires employers to give employees the option to be paid by check or through direct deposit. It also requires that the card be associated with an ATM network that ensures the availability of a substantial number of in-network ATMs in the state. Under the law, employees must be able to make at least three free withdrawals per pay period, and none of the employer's costs for using payroll cards can be passed on to employees.

Cite: 2016 CT SB211, CT Pub. Ch. 16-125 (4 pages)

Enacted: 6/7/2016

Effective: 10/1/2016

https://www.cga.ct.gov/2016/ACT/pa/2016PA-00125-R00SB-00211-PA.htm

District of Columbia

Wages

Creates the Fair Shot Minimum Wage Emergency Amendment Act

This law increases the district's minimum wage incrementally until it reaches $15 per hour in the year 2020. The law also provides that beginning in 2021, the minimum wage will increase each year based on the Consumer Price Index.

Cite: 2016 DC LB789, DC Pub. Ch. 21-428 (4 pages)

Enacted: 6/28/2016

Effective: 6/28/2016 and expires on 9/26/2016

http://lims.dccouncil.us/Download/36058/B21-0789-SignedAct.pdf

Hawaii

Workers' Compensation

Submission of treatment plan by physician

This law allows a physician to submit a treatment plan to an employer by mail or facsimile when the physician sends it to an address provided by the employer. Beginning January 1, 2021, the law requires employers to allow physicians to provide treatment plans in this manner. A treatment plan shall be deemed received by an employer when it is sent by mail or facsimile with reasonable evidence showing that it was received.

Cite: 2016 HI HB2017, HI Pub. Ch. 101 (3 pages)

Enacted: 6/21/2016

Effective: 6/21/2016

www.capitol.hawaii.gov/session2016/bills/HB2017_CD1_.HTM

Illinois

Analysis

Employee Benefits

New Chicago ordinance will require employers to provide paid sick leave

by Steven L. Brenneman

On June 22, the Chicago City Council passed an ordinance that will require nearly all employers in Chicago to provide paid sick leave to employees. The ordinance, which passed 48-0 despite opposition from business and employer groups, follows the lead of similar laws in several states and more than a dozen cities. It will take effect on July 1, 2017.

Up to 40 hours per year

The ordinance will apply to virtually all employers in Chicago, regardless of the number of employees. All

businesses that have a location in the city or are subject to city licensing requirements must comply (except for employers in the construction industry).

The ordinance will require employers to provide all employees who work at least 80 hours in a 120-day period with one hour of paid sick leave for every 40 hours worked, up to 40 hours of leave per year. Accrual of paid leave will start on the first day of employment or the ordinance's effective date, whichever is later. Paid sick leave will accrue only in one-hour increments.

Also, employers will be required to allow employees to carry over half of their unused accrued paid sick leave (up to 20 hours) to the next year. In addition, to further complicate matters, employers that are subject to the federal Family and Medical Leave Act (FMLA) must allow employees to carry over up to 40 *additional* hours of accrued paid sick leave to use exclusively for FMLA-qualifying purposes. However, if an employee carries over and uses 40 additional sick leave hours for FMLA-qualifying purposes, she may use only 20 additional hours of leave in the same 12-month period.

Employees may begin using paid sick leave no later than the 180th calendar day following the commencement of employment. Leave may be used:

- For an employee's illness or injury;
- For the illness or injury of an employee's family member (defined broadly);
- For appointments to receive medical care, treatment, or diagnosis or preventive care;
- When an employee or an employee's family member is a victim of domestic violence or a sexual offense; and
- When an employee's place of business or an employee's child's school or care facility is closed because of a public health emergency.

Employers will be required to compensate employees for paid leave at the same rate and with the same benefits, including healthcare benefits, they regularly earn during work hours. A special rule for tipped employees provides that the value of paid sick leave must be at least equal to Chicago's full minimum wage. In a rare nod to employers, employees are not entitled to payment or reimbursement for unused leave when they separate from employment. That provision stands in contrast with the Illinois Wage Payment and Collection Act (IWPCA), which generally requires employers to pay for accrued but unused paid time off upon termination.

The ordinance allows employers to require employees to provide up to seven days' notice before taking leave, but only if the need for leave is reasonably foreseeable. Otherwise, notice is required "as soon as is practicable on the day" employees intend to take paid sick leave. The law allows employers to obtain written certification from employees absent for more than three consecutive workdays to confirm that paid sick leave is being used for proper purposes.

Employers with union employees who are covered by a collective bargaining agreement (CBA) will not be covered by the ordinance until the agreement expires. Even then, future CBAs may waive the requirements of the ordinance.

Employers will be required to post a notice in their Chicago locations informing employees of the city's minimum wage and their rights under the new paid sick leave ordinance. Likewise, employers must provide a similar notice with employees' first paycheck subject to the ordinance. City officials have yet to make the prescribed notices available.

Covered employees may file suit for violations of the ordinance and recover *three times* the amount of paid sick leave denied or lost because of violations plus attorneys' fees, interest, and costs. As with most employment laws, Chicago's paid sick leave ordinance makes it unlawful for employers to retaliate against employees for exercising or attempting to exercise their rights under the law.

Bottom line

Chicago employers should begin preparing to comply with the new ordinance now. Covered employers that do not already provide paid sick leave will need to modify their policies and practices to comply with the law's requirements.

Excerpted from *Illinois Employment Law Letter*
Steven L. Brenneman, Kelly Smith-Haley, Editors
Fox, Swibel, Levin & Carroll, LLP

Louisiana

Background Checks

Healthcare providers

This law expands the types of healthcare providers required to perform criminal background history checks on unlicensed applicants for employment.

Cite: 2016 LA HB680, LA Pub. Ch. 311 (6 pages)

Enacted: 6/2/2016

Effective: 6/2/2016

www.legis.la.gov/legis/ViewDocument.aspx?d=1009638

Public Employers: Background Checks

Prohibits public employers from inquiring about criminal history

This law is commonly known as a "ban the box" law. It prohibits state employers from inquiring about a prospective employee's criminal history until the prospective employee has been given a chance to interview for the position or until after she has been given a conditional offer of employment. The law does not apply to a position in law enforcement or corrections or a position for which a criminal background check is required by law.

Cite: 2016 LA HB266, LA Pub. Ch. 398 (2 pages)

Enacted: 6/8/2016

Effective: 8/1/2016

www.legis.la.gov/legis/ViewDocument.aspx?d=1011207

Taxation

Department of Revenue filings

This law changes the date for employers to file annual returns with the Department of Revenue regarding

deductions and withholdings from the first business day following February 27 of each year to January 31 of each year. The law applies to all taxable years beginning on or after January 1, 2016.

Cite: 2016 LA HB737, LA Pub. Ch. 662 (4 pages)

Enacted: 6/17/2016

Effective: 6/17/2016

www.legis.la.gov/legis/ViewDocument.aspx?d=1013346

Unemployment Compensation

Spouse of military servicemember

This law provides that a spouse of a military servicemember will not be disqualified from unemployment compensation benefits if he resigns from employment to relocate with his spouse in accordance with an order of permanent change of station.

Cite: 2016 LA HB1142, LA Pub. Ch. 463 (4 pages)

Enacted: 6/9/2016

Effective: 8/1/2016

www.legis.la.gov/legis/ViewDocument.aspx?d=1011543

Workers' Compensation

Calculation of employer's annual premium

This law provides that the credit resulting from a settlement or judgment shall be used by the insurer in the calculation of the loss experience modifier specifically promulgated by and in accordance with the rules of the National Council on Compensation Insurance (NCCI) to be applied in determining the annual premium paid by the employer for workers' compensation insurance.

Cite: 2016 LA SB44, LA Pub. Ch. 470 (2 pages)

Enacted: 6/3/2016

Effective: 8/1/2016

www.legis.la.gov/legis/ViewDocument.aspx?d=1011773

Maryland

Analysis

Wage and Hour Law

Governor Hogan signs Equal Pay for Equal Work Act

by Kevin C. McCormick

The Maryland Equal Pay for Equal Work Act was one of the few employment-related bills the Maryland Legislature adopted this year. On May 19, 2016, Governor Larry Hogan signed the bill into law. The new law, which takes effect on October 1, 2016, generally prohibits employers from paying different wages based on sex or gender identity if employees work in the same establishment and perform comparable work.

Under the law, employers are prohibited from relying on sex or gender identity to assign or direct employees into less favorable career tracks or positions, fail to provide information about promotions or advancement in the full range of careers or career tracks offered by the company, or limit or deprive employees of employment opportunities that would otherwise be available to them.

The law establishes several exceptions to account for legitimate variations in wages, such as seniority systems, merit increase systems, shift differentials, and jobs that require different abilities or skills. An exception is also made for a system that measures performance based on quality or quantity of production or factors other than gender that are job-related and consistent with business necessity.

The legislation also contains pay transparency provisions that make it unlawful for an employer to prohibit an employee from asking about, discussing, or disclosing her own wages or those of another employee or asking for a reason for the amount of her wages; requiring an employee to sign a waiver of her right to disclose or discuss her wages; or taking adverse action against an employee for asking about, discussing, or disclosing her wages, asking for a reason for the wages, or aiding or encouraging another employee's exercise of these rights.

However, employers are permitted to have a written policy establishing reasonable limitations on the time, place, and manner of discussing wages during the workday and may discipline employees for violating the policy. Employers can also prohibit the disclosure of proprietary information, trade secret information, or any information that is otherwise subject to legal protection as well as the disclosure of wage information to a competitor.

The legislation also tweaks the remedies and damages that may be available to employees. To establish a violation, an employee must show his employer "knew or reasonably should have known that [its] actions violated the statute." If an employer pays different wage rates based on sex or gender identity and isn't able to demonstrate a legitimate reason for the variance, it may be subject to an injunction and could be required to pay the wage differential as damages. Finally, if an employer violates the provisions allowing employees to disclose or discuss wages, it could be subject to an injunction and actual damages as well as an additional amount in liquidated damages.

Excerpted from *Maryland Employment Law Letter*
Kevin C. McCormick and David M. Stevens
Whiteford, Taylor & Preston, L.L.P.

New Hampshire

Workers' Compensation

Eligibility for compensation

This law allows an injured worker whose treatment is purposely postponed for medical reasons beyond the fourth anniversary of the date of denial or last payment of compensation to petition the commissioner of labor, within a certain time frame, to review the denial or award of compensation. The law also requires that a written acknowledgment by the employee and notification to the workers' compensation carrier be included in the worker's medical record, including the medical reason for postponing the medical procedure.

Cite: 2016 NH SB203 (1 page)

Enacted: 6/21/2016

Effective: 9/19/2016

www.gencourt.state.nh.us/bill_status/billText.aspx?id=162&txtFormat=pdf&v=current

Ohio

Medical Marijuana

Creates a medical marijuana program

This law creates a state medical marijuana program. Nothing in the law requires an employer to permit or accommodate an employee's use, possession, or distribution of medical marijuana. It does not prohibit an employer from taking any adverse employment action because of a person's use, possession, or distribution of medical marijuana. The law also does not permit a person to sue an employer for taking an adverse employment action related to medical marijuana. Further, nothing in the law prohibits an employer from establishing and enforcing a drug-testing policy, drug-free workplace policy, or zero-tolerance drug policy.

The law also considers a person who is discharged from employment because of medical marijuana use to have been discharged for just cause under the unemployment compensation law if the use violated the employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating medical marijuana use. Such a person would be ineligible for unemployment benefits, which appears to be similar to current law. The law maintains the rebuttable presumption that an employee is ineligible for workers' compensation if he was under the influence of marijuana and being under the influence was the proximate cause of the injury, regardless of whether the marijuana use was recommended by a physician.

Cite: 2016 OH HB523, CT Pub. Ch. (84 pages)

Enacted: 6/8/2016

Effective: 9/28/2016

https://legiscan.com/OH/text/HB523/2015

Pennsylvania

Analysis

Medical Marijuana

Pennsylvania legalizes medical marijuana—what's next for employers?

by Gregory J. Wartman

On April 17, 2016, Governor Tom Wolf signed a bill legalizing the use of medical marijuana in the Commonwealth of Pennsylvania. The law, which took effect May 17, establishes certain rights and responsibilities for both employers and employees.

Background

In April, Pennsylvania became the 24th state to legalize medical marijuana with the passage of the Medical Marijuana Act (MMA). In signing the bill into law, Governor Wolf said the legislation "will improve the quality of life for patients and their families throughout Pennsylvania [and] shows that Harrisburg can come together to address big challenges on behalf of the people of the Commonwealth."

Medical marijuana requirements

The MMA allows patients to use medical marijuana if they suffer from a "serious medical condition," which includes 17 different conditions such as cancer, ALS, and Parkinson's disease.

Patients must obtain two documents before they can use medical marijuana: (1) a medical practitioner's certification that they suffer from a serious medical condition and (2) an identification card from the Pennsylvania Department of Health.

Although most people know marijuana as a drug that is smoked, smoking cannabis is unlawful under the MMA. Medical marijuana may be dispensed only as a pill, an oil, a topical ointment (e.g., a gel or cream), a tincture, or a liquid or taken by vaporization or nebulization.

Protections for employees and employers

The MMA provides protections for patients who lawfully use medical marijuana and their employers. The Act states, "No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding . . . compensation, terms, conditions, location or privileges [of employment] solely on the basis of such employee's status as an individual who is certified to use medical marijuana." In addition:

- The Act does not require employers to "make any accommodation of the use of medical marijuana on the property or premises of any place of employment."
- The MMA does not limit an employer's right or ability to "discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position."
- An employer may prohibit an employee from performing any task it deems life-threatening while under the influence of medical marijuana. The MMA states such a prohibition will not be deemed an adverse employment action, even if the employee suffers financial harm.
- An employer may prohibit an employee from performing any work that "could result in a public health or safety risk" while under the influence of medical marijuana.
- The Act does not require an employer to take any action that would violate federal law.
- An employee may not be in physical control of certain chemicals, high-voltage electricity, or a public utility "while under the influence with a blood content of more than 10 nanograms of active tetrahydrocannabis per milliliter of blood in serum."
- An employee "may not perform any employment duties at heights or in confined spaces . . . while under the influence of medical marijuana."

Bottom line

Employers must familiarize themselves with their rights and obligations under the MMA. You may place certain restrictions on employees who use medical marijuana, but you must be mindful of employees' rights under the

Act. Failing to follow the MMA could subject employers to not only greater exposure to traditional employment claims but also stiff civil penalties. Penalties could be as much as $10,000 per violation and an additional $1,000 per day for each continuing violation.

Excerpted from *Pennsylvania Employment Law Letter*
Greg Wartman, Editor
Saul Ewing LLP

Texas

Analysis

Hiring

Austin 'bans the box'

by Ashlee Mann Ligarde

On March 24, 2016, the Austin City Council passed the Fair Chance Hiring Ordinance, which prohibits covered employers from asking about or considering a job applicant's criminal history until after a conditional offer of employment has been made. In passing the ordinance, Austin joined 21 states, more than 100 cities and counties, and the federal government in removing questions about criminal history from employment applications (a practice dubbed "banning the box"). According to the city council, the ordinance is intended to give applicants a chance to compete for employment without the stigma of a criminal record.

Which employers does the ordinance cover?

The ordinance covers employers with at least 15 employees whose primary worksite is the city of Austin for each working day in 20 or more calendar weeks during the current or preceding calendar year, including employment agencies acting on behalf of employers. "Employee" is broadly defined to include any individual who works for an employer for pay, including full-time, part-time, temporary, seasonal, contract, casual, and contingent workers.

The ordinance excludes state and federal government agencies, bona fide private membership clubs, and jobs "for which a federal, state, or local law, or compliance with legally mandated insurance or bond requirement disqualifies an individual based on criminal history."

What does the ordinance prohibit?

The ordinance prohibits a covered employer from asking about or considering an applicant's criminal history unless it has made a conditional offer of employment that is "conditioned solely on [its] evaluation of the individual's criminal history" or any preemployment medical exam permitted by the federal Americans with Disabilities Act (ADA). This means that Austin employers may no longer ask applicants about their criminal history on a job application or run a criminal background check on the applicant until after a conditional employment offer has been made.

Unlike most ban-the-box laws, Austin's ordinance also prohibits an employer from refusing to hire, refusing to promote, or revoking an employment or promotion offer based on someone's criminal history unless the employer has "determined that [he] is unsuitable for the job based on an individualized assessment." The individualized assessment must include an analysis of the nature and gravity of any offenses, the length of time since the offense occurred and any jail or prison sentence was completed, and the nature and duties of the job for which the individual has applied.

If an employer takes an adverse action on the basis of criminal history, it must inform the applicant or employee in writing that the adverse action was based on his criminal history. The ordinance also prohibits retaliation against an applicant or employee for reporting a violation. Although the ordinance doesn't provide for a private right of action, employers that violate it may be liable for a civil penalty of up to $500 per violation beginning in April 2017.

What actions should employers take to comply?

Given the ordinance's broad coverage, all employers doing business in Austin should immediately assess whether they are covered. (The Austin Chamber of Commerce estimates that 7,000 employers may be covered by the new law.) Covered employers should then revise their employment applications, if necessary, along with any hiring or promotion practices that implicate applicants' criminal history before a conditional offer of employment or promotion is made. Additionally, all employees involved in the hiring and promotion process (including management and HR personnel outside the Austin area) should be educated on the requirements and prohibitions of the new ordinance.

Excerpted from *Texas Employment Law Letter*
Michael P. Maslanka of FisherBroyles, LLP, Mark Flora of Constangy, Brooks, Smith & Prophete LLP, and
Jacob M. Monty of Monty & Ramirez LLP, Editors

Regulations

Alabama

Licensure—Continuing Education

Mandatory continuing education for dentists and dental hygienists

The Board of Dental Examiners adopted amendments to regulations for mandatory continuing education for dentists and dental hygienists. Dentists are required to complete 20 hours of continuing education every year, with no more than half of the hours to be completed by videotapes, journals, Internet courses, or distance-based education. CPR as well as insurance and risk management hours are considered. Dental hygienists must complete 12 hours every year, with no more than half of the hours satisfied by video, correspondence, or distance-based education. Record-keeping, reporting, and monitoring provisions are included as well as auditing, waivers, and criteria for the approval of classes.

Cite: AAC 270-X-4-.04 (AAM Volume XXXIV, Issue No. 8, 05/31/2016) (22 pages)

Adopted: 5/31/2016

Effective: 10/1/2016

www.alabamaadministrativecode.state.al.us/docs/den/270-X-4.pdf

California

Licensure—Veterans

Military training for barbering and cosmetology

The Board of Barbering and Cosmetology added a new rule to specify how veterans may use education, training, or experience obtained in the armed services to apply toward qualification for the board's licensure examination.

Cite: 16 Cal. Code Regs. § 910 (CRNR Register 2016, No. 22-Z, 05/27/2016, page 911) (1 page)

Adopted: 5/27/2016

Effective: 7/1/2016

https://govt.westlaw.com/calregs/Search/Index

Occupational Safety

Stay of abatement

The Occupational Safety and Health Appeals Board (OSHAB) amended regulations in Title 8 of the California Code of Regulations to establish that stays of abatement of nonserious worker safety conditions by cited employers remain stayed pending disposition of an appeal unless otherwise ordered by OSHAB. The action conforms Section 362 of OSHAB's regulations to Assembly Bill 1634 (Chapter 497 of 2014) regarding the absence of a stay of abatement of serious citations during the pendency of a request for reconsideration. The action also amends Sections 364 and 364.1 of OSHAB's regulations regarding withdrawals of appeals by employers and withdrawals and partial withdrawals of citations by the Division of Occupational Safety and Health.

Cite: 8 Cal. Code Regs. 362, 364; 8 Cal. Code Regs. 364.1 (CRNR Register 2016, Volume No. 22-Z, 05/27/2016, page 913) (3 pages)

Adopted: 5/27/2016

Effective: 7/1/2016

https://govt.westlaw.com/calregs/Search/Index

Workers' Compensation

Classification/rating rules

The Department of Insurance adopted annual amendments to the California Workers' Compensation Experience Rating Plan-1995. This publication is incorporated by reference in Section 2353.1 of Title 10 of the California Code of Regulations.

Cite: 10 Cal. Code Regs. 2353.1 (CRNR Register 2016, Volume No. 21-Z, 05/20/2016, page 859) (3 pages)

Adopted: 5/20/2016

Effective: 1/1/2017

https://govt.westlaw.com/calregs/Search/Index

Idaho

Insurance

Self-funded employee healthcare plans rule

The Department of Insurance amended rules to conform to code changes made during 2013, including changes regarding contribution rates, scope of coverage, third-party administrators, contracts and services, and records.

Cite: IDAPA 18.01.27.001, 010-021, *et seq.* (16-5 Idaho Admin. Bulletin 31, 05/04/2016) (6 pages)

Adopted: 5/4/2016

Effective: 3/25/2016

http://adminrules.idaho.gov/rules/current/18/0127.pdf

Licensure—Genetic Testing

Genetic counselors licensing board

The Genetic Counselors Licensing Board adopted a new chapter of regulations to regulate the profession of genetic counseling in the interest of public health, safety, and welfare. Regulations include rules for original licensure, examinations, continuing education, and discipline.

Cite: IDAPA 24.24.01 (16-5 Idaho Admin. Bulletin 32, 05/04/2016) (8 pages)

Adopted: 5/4/2016

Effective: 3/24/2016

http://adminrules.idaho.gov/bulletin/2015/10.pdf

Workers' Compensation—Healthcare Costs

Medical fees

The Industrial Commission amended regulations concerning medical fees and coding to clarify how outpatient hospital procedures are to be paid in the presence or absence of Comprehensive Ambulatory Payment Classification (C-APC) codes, including status indicator J1. The coding guidelines published by the Centers for Medicare & Medicaid Services (CMS) and the American Medical Association (AMA) are adopted as a standard reference for facility charges. The standard for reimbursement of rehabilitation hospitals will be changed to the same as other non-Critical Access Hospitals (CAHs).

Cite: IDAPA 17.02.09.030, 032 (16-5 Idaho Admin. Bulletin 32, 05/04/2016) (10 pages)

Adopted: 5/4/2016

Effective: 7/1/2016

http://adminrules.idaho.gov/rules/current/17/0209.pdf

Missouri

Licensure

Veterinary faculty licensure

The Veterinary Medical Board updated requirements for faculty licensure by including academic or institutional practice, clinical internships, and residency programs and deleted reference to state board examination fees.

Cite: 20 CSR 2270-2.052 (41 Missouri Register 635, 05/02/2016) (6 pages)

Adopted: 5/2/2016

Effective: 6/30/2016

http://s1.sos.mo.gov/cmsimages/adrules/csr/current/20csr/20c2270-2.pdf

New Hampshire

Licensure—Healthcare Professionals

Continued status, disciplinary sanctions, and delegation

The Board of Nursing amended and readopted rules to address disciplinary sanctions as they relate to leaving an assignment without proper notification and regarding various criteria around the delegation of nursing tasks.

Cite: N.H. Admin. Rules Nur 402.04, *et seq.* (NHRR, Volume XXXVI, Number 19, 05/12/2016, page 11) (9 pages)

Adopted: 5/12/2016

Effective: 4/26/2016

http://gencourt.state.nh.us/rules/state_agencies/nur100-800.html

Licensure—Healthcare Professionals

Registration requirements, applications and fees, registration renewal and reinstatement

The Board of Registration of Medical Technicians amended rules concerning requirements to register as a medical technician and requirements to renew or reinstate a registration as a medical technician.

Cite: N.H. Admin. Rules Mtec 301.01, *et seq.* (NHRR, Volume XXXVI, Number 19, 05/12/2016, page 12) (10 pages)

Adopted: 5/12/2016

Effective: 5/5/2016

http://gencourt.state.nh.us/rules/State_Agencies/mtec.html

Wages

Payment of wages and employer requirements

The Department of Labor amended regulations setting out employer responsibilities relating to the payment of wages and notification and record-keeping requirements, with amendments to definitions, uniform provision by employers, wage rules for tipped employees, and subminimum wage programs for individuals with disabilities to establish practical experience.

Cite: N.H. Admin. Rules Lab 801.01, *et seq.* (NHRR, Volume XXXVI, Number 19, 05/12/2016, page 11) (11 pages)

Adopted: 5/12/2016

Effective: 4/11/2016

http://gencourt.state.nh.us/rules/state_agencies/lab800.html

New Mexico

Licensure

Horse racing licenses required

The Racing Commission adopted amendments to regulations related to the licensure of employees involved in parimutuel racing operations requiring renewed fingerprinting and photographs every six years and eliminating a requirement for written examinations for trainers.

Cite: 16.47.1.8, 10 NMAC (8 New Mexico Register 374, 05/31/2016) (3 pages)

Adopted: 5/31/2016

Effective: 6/1/2016

http://164.64.110.239/nmregister/xxvii/xxvii10/xxvii10.pdf

New York

Workers' Compensation

Meetings of the Workers' Compensation Board

The Workers' Compensation Board amended regulations governing board meetings to allow the chair to call and convene special meetings using electronic means, including but not limited to teleconferencing and videoconferencing.

Cite: 12 NYCRR 300.27 (2016-38 N.Y. St. Reg. 14, 05/18/2016) (2 pages)

Adopted: 5/18/2016

Effective: 5/18/2016

http://docs.dos.ny.gov/info/register/2016/may18/pdf/rulemaking.pdf

Ohio

Occupational Safety

Workshop and factory safety

The Bureau of Workers' Compensation adopted amendments to employer requirements for the protection of employees and others for all workshops and factories subject to the Workers' Compensation Act. The amendments update regulations for compatibility with federal Occupational Safety and Health Administration (OSHA) regulations.

Cite: Ohio Admin. Code 4123:1-5-01, 02, *et seq.* (Register of Ohio, 05/20/2016) (195 pages)

Adopted: 5/20/2016

Effective: 6/1/2016

www.registerofohio.state.oh.us/jsps/publicdisplayrules/processPublicDisplayRules.jsp?MONTH=05&DAY=20&YEAR=2016&agencyNumberString=4123&actionType=final&doWhat=GETBYAGENCYANDFILINGDATE&Submit=Search

South Carolina

Healthcare Professionals

Continuing education in sterilization and infection control

The Board of Dentistry amended regulations to comport with federal infection control standards. The regulations concern the registration of licenses or certificates and

include continuing education requirements and sanitary requirements for dental offices and laboratories.

Cite: S.C. Code Regs. 39-5, 10 (40-5 South Carolina Register 218, 05/27/2016) (3 pages)

Adopted: 5/27/2016

Effective: 5/27/2016

www.scstatehouse.gov/state_register.php?first=FILE&pdf=1&file=Sr40-5.pdf

Licensure

Continuing education, payment of fees, appraisal experience, appraiser apprentice requirements

The Real Estate Appraisers Board amended regulations regarding continuing education, payment of fees, appraisal experience, and appraiser apprentice requirements to comply with recommendations of the Appraisal Subcommittee of the Federal Financial Institutions Examinations Council.

Cite: S.C. Code Regs. 137-100.06, 07, *et seq.* (40-5 South Carolina Register 228, 05/27/2016) (7 pages)

Adopted: 5/27/2016

Effective: 5/27/2016

www.scstatehouse.gov/state_register.php?first=FILE&pdf=1&file=Sr40-5.pdf

Texas

Occupational Safety

Medical waste management

The Texas Commission on Environmental Quality adopted a new section of regulations specific to the handling, transportation, storage, and disposal of medical waste. The new section primarily involves extracting or replicating rules from another chapter and includes general information, packaging, labeling, and shipping requirements, exempt operations and operations requiring notification, registration, fees, and reporting.

Cite: 30 TAC 326.1, 3, 5, 7, *et seq.* (41 TexReg 3697, 05/20/2016) (40 pages)

Adopted: 5/20/2016

Effective: 5/26/2016

http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=30&pt=1&ch=326

Professional Employer Organizations

Professional employer organizations sponsoring self-funded employee health benefit plans

The Department of Insurance adopted a new subchapter to augment and implement the regulation of an employee health benefit plan that is not fully insured and is sponsored by a professional employer organization as permitted by Texas Labor Code Chapter 91.

Cite: 28 TAC 13.510, 511, 512, *et seq.* (41 TexReg 3479, 05/13/2016) (22 pages)

Adopted: 5/13/2016

Effective: 5/17/2016

http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=28&pt=1&ch=13&sch=F

Virginia

Healthcare Professionals

Regulations governing the practice of medicine, osteopathic medicine, podiatry, and chiropractic

The Board of Medicine amended rules to eliminate pharmacists as a practitioner who can perform mixing, diluting, or reconstituting without a second check. A pharmacist is required by law to follow the United States Pharmacopeia—National Formulary for compounding of drug products and does not fall under the exemption for physicians and persons in physicians' practices.

Cite: 18 VAC 85-20-400 (32 Virginia Register of Regulations 2506, 05/30/2016) (3 pages)

Adopted: 5/30/2016

Effective: 7/15/2016

http://register.dls.virginia.gov/vol32/iss20/v32i20.pdf

Occupational Safety

Federal identical standards, electrical safety-related work practices

The Safety and Health Codes Board adopted by reference the Occupational Safety and Health Administration's corrections to the electrical safety-related work practices standard for general industry and the electric power generation, transmission, and distribution for general industry and construction final rule.

Cite: 16 VAC 25-90-1910; 16 VAC 25-175-1926 (32 Virginia Register of Regulations 2505, 05/30/2016) (2 pages)

Adopted: 5/30/2016

Effective: 7/1/2016

http://register.dls.virginia.gov/vol32/iss20/v32i20.pdf

Washington

Employee Responsibilities

Horse training responsibilities

The Horse Racing Commission added language in the trainer responsibility regulations to indicate that trainers are responsible to inform the owners of horses in their care of pending allegations of rule violations that involve their horses, including but not limited to alleged medication violations.

Cite: WAC 260-28-295 (WSR 16-09-034, 05/04/2016) (3 pages)

Adopted: 5/4/2016

Effective: 5/15/2016

http://lawfilesext.leg.wa.gov/law/wsr/2016/09/16-09-034.htm

Occupational Safety

Safety standards for construction work

The Department of Labor and Industries amended rules to provide a consistent format across all Department of Occupational Safety and Health (DOSH) rules. The updated format provides easy access to rules for smartphone and tablet users, provides easy navigation in PDF documents, and provides easier referencing by replacing bullets and dashes with numbers and letters. No rule requirements were changed as a result of this rule-making adoption.

Cite: WAC 296-155 (WSR 16-09-085, 05/04/2016) (704 pages)

Adopted: 5/4/2016

Effective: 5/20/2016

http://lawfilesext.leg.wa.gov/law/wsr/2016/09/16-09-085.htm

Occupational Safety

Safety standards for electrical workers

The Department of Labor and Industries updated rules based on changes to Occupational Safety and Health Administration (OSHA) standards for electric power generation, transmission, and distribution and electrical protective equipment. The department is required to maintain rules at least as effective as OSHA rules, and it incorporated the most recent national standards and industry practices, and 2014 ANSI standards.

Cite: WAC 296-45-015, 035, 045, *et seq.* (WSR 16-10-08, 05/18/2016) (128 pages)

Adopted: 5/18/2016

Effective: 7/01/2016

http://lawfilesext.leg.wa.gov/law/wsr/2016/10/16-10-082.htm

Occupational Safety

Safety standards for electrical workers when working with the assistance of helicopters

The Department of Labor and Industries amended regulations to update safety requirements relating to electrical work being done with the assistance of helicopters, including language relating to certification requirements, hazard analysis, pilot fatigue, and sling and rigging requirements.

Cite: WAC 296-45-67503, 67504, *et seq.* (WSR 16-10-081, 05/18/2016) (17 pages)

Adopted: 5/18/2016

Effective: 7/1/2016

http://lawfilesext.leg.wa.gov/law/wsr/2016/10/16-10-081.htm