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If you're an employer, human resources professional, manager or supervisor, you know how challenging it is to hire, train and keep good employees. Of course, not all employees are "good," and the difficult ones can be a drain on productivity and morale. Generational differences make your job even more complex and require you to identify new ways to accomplish the same objective. Is it a cruel joke you also have to comply with an expanding library of federal, state and local employment laws and face the potential of personal liability for a simple mistake?



Anderson

Fortunately, you have the ability to prevent most employment disputes and to quickly resolve them in a way that minimizes legal exposure for you and your company. Employment laws and their interpretation by the courts change constantly, so staying on top of legal developments is the first line of defense against employment disputes and liability. Finding a good resource is half the battle, which is why *The Forum* is offering this new column prepared by a Louisiana employment attorney who counsels and defends employers and management in a wide range of employment law matters. This month's column features recent and upcoming changes in the federal law that requires family and medical leave for certain employees.

must have worked at least 1,250 hours in the 12 months preceding the leave and must work at a location where at least 50 employees work within a 75-mile radius.

The FMLA requires a covered employer to provide leave to an eligible employee for the birth and care of a newborn; the placement of a child for adoption or foster care; the care of a spouse, child or parent with a serious health condition; or the employee's serious health condition if it makes the employee unable to perform his job. The FMLA requires the maintenance of certain health-care benefits during the leave and generally entitles the employee to job restoration upon return from leave. Unfortunately, a violation of the FMLA can subject both the company and certain individuals to liability, and a good faith mistake will only reduce, not eliminate, legal exposure.

The FMLA was enacted in 1993, and the U.S. Department of Labor (DOL) promulgated more than 50 pages of detailed regulations interpreting the law. A number of the regulations have generated confusion and litigation for employers, including the definition of a "serious health condition," intermittent leave rules and procedures for clarifying a health-care provider's medical certification. So, many employers and their attorneys have anxiously awaited revisions to the regulations. The proposed revisions and explanation are out, however, and at several hundred pages, they raise two immediate questions: (1) What are the changes? and (2) Are they an extreme makeover or just a cosmetic touchup?

It's not possible to cover all the proposed changes in this issue, but some of the highlights are:

- Reorganization to combine related regulations into discrete sections, including those relating to pregnancy, childbirth and child care, and eliminate redundancy;
- Exclusion of employment prior to a break in service of five years or more from the 12 months of employment required to be eligible for leave, subject to certain exceptions;

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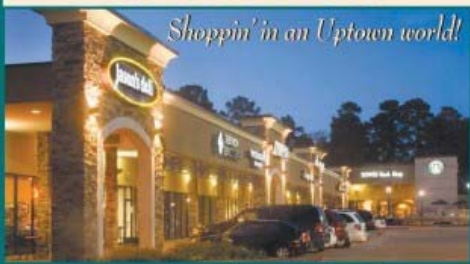
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- Clarification that an employer who allows an employee's health insurance to lapse due to the employee's failure to pay during leave must reinstate the insurance when the employee returns and is liable for harm to the employee for failure to do so;

- Clarification that employers are permitted to deny payment of a goal-based bonus, such as hours worked or perfect attendance, if the employee fails to achieve the goal as a result of an FMLA absence;

- Recognition that employers and employees can settle FMLA claims without court or DOL approval;

- Permission for employers to use an electronic notice explaining the FMLA and complaint procedures in place of a physical notice posted in the workplace;

- Requirement that employees who provide less than 30 days' notice of the need for leave explain why such notice is not practicable if requested to do so by the employer;

- Requirement that while employees need not identify the FMLA in a leave request, employees must provide sufficient information for an employer to know that FMLA rights may be at issue;

- Clarification that a call from an employee stating that he is "sick" is insufficient to trigger an employer's obligations under the FMLA in the case of unforeseeable leave;

- Extension of the time for an employer to request medical certification from the employee from two to five days after receiving notice of the need for leave;

- Requirement that an employer state in writing what additional information is necessary upon receipt of an incomplete or insufficient medical certification, and allow the employee seven days to cure the deficiency;

- Requirement that the health-care provider's specialization and fax number be provided on a medical certification; and

- Clarification that employees are not required to sign medical release forms as a condition of taking FMLA leave.

Notably, the DOL has not proposed any substantive revisions to the definition of "serious health condition" although it proposes reorganizing the section to make it clearer. None of the proposed revisions appear to be extreme, but the substantive revisions could affect how covered employers handle FMLA issues.

The DOL is accepting comments from the public until April 11. Also, remember that one important change to the FMLA took effect earlier this year and now provides up to 26 weeks of leave in a 12-month period to care for a service member who has a serious illness or injury.

Now is the time to prepare yourself for inevitable changes to the FMLA and to review your current FMLA policy and practices for compliance. Hopefully, you'll need nothing more than a cosmetic touchup when the final regulations are issued.

Jennifer L. Anderson is a partner in the Labor and Employment Law Practice Group at Jones Walker. You can obtain more information and contact her through Jones Walker's Web site at www.joneswalker.com.

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is not surprising though considering the warm welcome Jindal and his entourage received when they walked into the House chamber a few minutes ago to unwrap the governor's second special session. The applause was just a few seconds longer and decibels higher to notch a comprehensible difference, but it was detectable.

Legislators, many of whom boiled over when Jindal's enhanced ethics laws shot through the February special session, appear to be on their own roads to Damascus for this new gathering. It is all quite presidential, from Jindal's crimson-and-navy striped tie to the Reagan-esque rhythm and state-of-the-union structure of his speech. The numbers are impressive as well; Jindal tells lawmakers he wants to spend more than \$1 billion in surplus cash on business incentives and public infrastructure.

In an effort to put a human face on the otherwise mundane policy issues of his agenda, the governor introduces "real" Louisiana people throughout his speech. He invites Gary Chouest, owner of Edison Chouest Offshore and C-Logistics in Lafourche Parish, to stand. He thanks the Louisiana tycoon for his ongoing economic development efforts, and a couple of legislators actually jump to their feet to show they, too, are thankful.

Everyone who is anyone already knows Chouest, however, so it is not much of an introduction. He donated \$100,000 last year to the Louisiana Committee for a Republican Majority, which was formed to force a GOP takeover in the Legislature — an unaccomplished task. Chouest, his companies and his family have also given Jindal tens of thousands of dollars over the years for congressional and gubernatorial campaigns, as documented on the state and federal level. Furthermore, his daughter and business partner, Dionne Chouest, served on one of Jindal's workforce transition teams earlier this year.

So why exactly is Jindal giving Gary Chouest a front-row seat on this very evening? With a smile to his longtime friend, the governor announces that the state will commit \$10 million to the Port of Terrebonne for its planned incorporation of LaShip, which is an Edison Chouest subsidiary. The development, which also had a footing in the previous administration of Democrat Kathleen Blanco, promises to bring in average salaries of \$54,000 for the region. "One thousand new jobs mean 1,000 more people — and their families — investing in the local economy, putting down roots in the community and pursuing their dreams right here at home," Jindal said.

By any definition, it is transparency at its exceptional best, but it also bares forth the political reality that costly connections can yield prosperous results — even in the shadow of a historic shift in ethics. But Jindal does not dwell. He moves his speech along and likewise vows \$300 million for coastal restoration and hurricane protection projects.

Jindal then introduces Wilson "Doc" Gaidry, a shrimper and coastal advocate who knows the waters around Cocodrie like others might know their subdivisions. "Doc has lived along the coast of south Louisiana for more than 70 years, and he can attest to the deterioration of our coastline just in his lifetime alone," Jindal said, "a deterioration that weakens our abilities to protect against future hurricanes and affects the ecosystem of the entire region."

As for specifics on how the \$300 million might be spent, Jindal does not address them in detail, and neither does Doc. That's because Jindal is only asking lawmakers to deposit the money into a special fund that is overseen by the Coastal Protection and Restoration Authority (CPRA), Louisiana's guiding coastal agency that has the authority to sign contracts and spend money. In fact, the enacting legislation is a scant 188 words in length.

The CPRA is allowed to interpret the Legislature's intent and is not technically bound to Jindal's promises — that 85 percent of the money will be used for construction only — because nothing akin is actually in the legislation. To counter any concerns that might arise from the arrangement, Garret Graves, chairman of the CPRA, said public hearings will be held should the Legislature and Jindal enact the funding proposal.

The \$300 million purse also places the CPRA in a position to serve as a real agency as it was always intended. But the transition is happening sooner than anyone expected. During the minutes prior to Jindal's entrance that evening, Scott Angelle, secretary of the Department of Natural Resources, admits that some administrative changes are being considered. "We're looking at a few different things," he said, "but it'll hold until next month in the regular session."

Just like Jindal's trusty TelePrompTer, all the issues in this second special session have another side to share — other than what's on the surface or in a press release. But unlike those plastic, electronic placards, these matters are not transparent to the naked eye. Yet, it doesn't seem to bother Jindal since the details often work themselves out; moreover, Jindal is a "big picture guy." He has already ushered in notable ethics changes like fuller financial disclosure and lobbyist reporting that are captivating a national audience that has become all too familiar with another perspective on Louisiana politics.

He makes that point in his speech and describes this most recent special session as a way to build on that early momentum. After all, *The New York Times* and CNN will eventually lose interest in Louisiana's newfound ways — and perhaps its triumphant southern governor as well despite the buzz about a potential vice-presidential nod. Could it be possibly that the fate of both is intertwined? "While we have their attention, we must move swiftly," Jindal said, turning his attention to lawmakers. "That is the purpose for which I have called you here today. And it is a purpose that touches the lives of everyone in our state."

BRIEFS

MEETINGS AND SEMINARS

- Jack Medina, America's favorite coach and nationally renowned speaker, will present "The Winning Edge," a lecture on changing the way one views his health and diet from 7-8:30 p.m. March 21 at the Louisiana Board of Realtors, 2036 E. 70th St., Shreveport. Group seats are available for sports teams, fitness club trainers and academic groups. Admission is free, but space is limited. Reserve your seat online at www.premierwholehealth.com. For more information, call (225) 718-3380.

- The monthly meeting of the Shreveport-Bossier City chapter of Executive Women International will be at 11:45 a.m. March 26 at Boomtown Casino and Hotel, 300 Riverside Drive, Bossier City. Guest speaker is local entrepreneur Teri Noble of Teri Noble Creative. The cost of lunch is \$15, and reservations are required. For more information or to make reservations, call Virginia Lewis at 675-4147 or Sue Doughty at 213-0208.

AWARDS AND RECOGNITION

- Bill Nabors earned the Accredited Advisor in Insurance (AAI) Award from the American Institute for Chartered Property Casualty Underwriters in Malvern, Penn. The program consists of a series of written exams covering multiple types of personal and commercial insurance. He is the owner of Nabors Training and Consulting, a certified insurance training business, which he began in 2000.

- The Northwest Louisiana American Society for Training and Development (ASTD) announced its annual awards for 2007 at its monthly meeting. Praeses received the Excellence in Training Award. Teresa Allen, owner of Common Sense Solutions Training and Consulting, received the Professional Trainer of the Year Award. Allen Garcia, LSUS Division of Continuing Education, received the Training Support Award. And Debra Harmon, ACT testing coordinator, was the recipient of Outstanding Chapter Member.

COMMUNITY BRIEFS

- Red River Waterway Commission (RRWC) announced its plans to sign a cooperative agreement for \$2.5 million to fund a 100,000-square-foot warehouse and distribution facility that will generate additional employment and commerce for The Port of Shreveport-Bossier, as well as increase tonnage on the Red River by approximately 225,000 tons. Estimated cost of the total project is approximately \$8 million.

- Alan Shawn Feinstein will divide \$1 million among hunger-fighting agencies nationwide for the 11th straight year to help them raise funds during March and April 2009. Locally, donations made to the Food Bank of Northwest Louisiana through April 30 will help increase the amount of the Feinstein Foundation's donation to the Food Bank. For more information, visit www.feinsteinfoundation.org.

BRIEFLY

Horseshoe's CMT Crossroads Bar



Horseshoe Casino and Hotel is scheduled to open the first-ever CMT Crossroads Bar on May 1. The \$3.3 million project will encompass 3,300 square feet with a stage, dance floor and a 27-foot circular bar. A building wrap measuring 83 feet by 43 feet was installed to help promote the new venue.