

LEGAL CHANGES FOR EMPLOYERS

■ Some notable successes, failures

Laws and sausages have something in common. You should never watch either of them being made. Yet, every year employers carefully watch state lawmakers propose new and amended laws affecting their rights and obligations with respect to applicants and employees. In some years, when all is said and done, employers let out a collective sigh of relief, and in others, they let out a collective gasp. Either way, keeping up with the legal changes affecting employers is just part of doing business.

This year, the most controversial "employment" bill in the Louisiana Legislature was the pay hike the legislators voted for themselves at the expense of their employer, Louisiana's taxpayers. But there were other employment bills that, while much less publicized, should be of interest to employers, human resources professionals and managers. Some of those bills were successful in their legislative journey, and others were not but may be resurrected in the next regular session. Here are some of the more notable successes and failures in the realm of employment law from the 2008 Louisiana Legislature's regular session.

Unemployment relief for some: There was near unanimous support for two bills granting relief to nonprofit organizations, the state and its political subdivisions, and Indian tribes or tribal units saddled with unemployment compensation debt caused by Hurricanes Katrina and Rita in 2005. Senate Bill (SB) 168 (Murray) and House Bill (HB) 186 (Honey) passed with overwhelming support and will provide much-needed relief to these employers, who pay unemployment compensation benefits by reimbursement rather than by contribution and thus had significant debt as a result of the 2005 hurricane season.

New take on non-competes: Louisiana law allows non-competition and non-solicitation agreements only under limited circumstances. The law spells out the arrangements in which parties can have these agreements and the technical requirements they must meet. The law was revised this session to allow these agreements in another set of circumstances, specifically between a franchisor and its employee. HB 968 (Edwards) was successful in amending the law to permit a franchisor and its employee to agree that the employee will refrain from competing with the employer, or any of the franchisees of the employer, or from engaging in any other business similar to that which is the subject of the franchise. Such an agreement may continue in effect during the term of the employee's employment by the franchise and for up to two years after his employment with the franchisor ends. The amendment also allows the franchisor and employee to agree the employee will not solicit customers of the franchisor or the franchisees for up to two years after his

employment with the franchisor ends.

New rules for employment of minors: The Legislature had only minor changes for the rules regarding the employment of minors (pun intended). The law now states minors under 14 may be employed only if they are at least 12, the minor's parent or legal guardian is an owner or partner in the employing business, the minor works only under the direct supervision of the parent or legal guardian who is an owner or partner in the employing business, the minor receives all protections afforded to minor employees who are 14 or 15 years of age and the minor obtains an employment certificate otherwise required by law. The rest of the minor employment rules remain the same.

The unsuccessful legislative efforts can be as noteworthy as the successful ones, particularly in the employment area, because they typically signal trends or what to look for in the next regular legislative session. Here is a quick review of some of the bills that didn't make it through this time, but that you may see again next year.

Employee misclassification: SB 466 (Murray) would have penalized employers in the construction industry who misclassify employees as independent contractors. The proposed penalties were significant, including civil money damages and criminal fines and imprisonment. The bill died in the Senate Commerce Committee, but employers should be vigilant about properly classifying employees and independent contractors in light of recent indications by various federal agencies that they are focused on identifying misclassifications and recovering taxes and penalties from offending companies. This may be an issue the Legislature addresses again soon.

Employing undocumented immigrants: Two bills aimed at penalizing employers for hiring or using unauthorized or undocumented immigrants did not get very far in the legislative process, but this is a controversial issue that is expected to stay in the news and on the agendas of lawmakers. HB 1103 (Williams) would have required every employer to verify the employment eligibility of every employee hired after Dec. 31, 2008, through the basic employment verification pilot program jointly administered by the U.S. Department of Homeland Security and the Social Service Administration, among other things. HB 1082 (Geymann) would have prohibited state agencies from contracting to acquire goods or services from any person knowingly using the services of illegal immigrants in the performance of the contract, among other things.

Both of these bills died in their respective committees. While neither of these efforts were successful, the Legislature issued a resolution urging and requesting the

Anderson: Continued on page 11



Anderson

U.S. Congress to increase penalties for employers who employ unauthorized aliens through House Concurrent Resolution No. 63 (Hardy). It also issued a request for various legislative committees on labor to review the economic and social impact of illegal immigration on the state of Louisiana through Senate Concurrent Study Request No. 1 (Nevers). States may have difficulty attempting to regulate the area of immigration, which is viewed by most legal analysts as an area within the exclusive regulatory power of the federal government. However, many states are attempting to get involved in immigration matters, which may bring this issue before federal appellate courts and eventually the U.S. Supreme Court.

Sexual orientation discrimination: A bill seeking to expand protections for state employees by prohibiting discrimination based on sexual orientation died in the House and governmental Affairs Committee. HB 981 (LaFonta) would have established a new, separate law specifically prohibiting the state and its agencies, including "officers," from engaging in discrimination or harassment based on race, color, religion, sex, sexual orientation, national origin, political affiliation or disabilities. So, it's status quo for state employers when it comes to the classes of individuals protected from discrimination in employment in Louisiana.

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