

Workplace Laws Proposed in Washington and Concord

By Jim Reidy

The workplace is more regulated now than ever before, causing employers to spend a majority of their time trying to stay in compliance. The state and national elections last fall caused a shift in power and with that a shift in focus on some workplace issues. However, while one widespread campaign promise was to get government out of the way of business, especially with regard to administrative rules and regulations, there is still no shortage of workplace bills both in Concord and in Congress.



tial contract negotiation disputes and thereby avoid delays with the negotiation of the first collective bargaining agreement between parties.

Davis-Bacon Repeal Act (S. 244): This would repeal the wage requirements of the Davis-Bacon Act, which requires that the locally prevailing wage rate be paid to various classes of laborers and mechanics working under federally-financed or federally-assisted contracts for construction, alteration, and repair of public buildings or public works.

Truth in Employment Act of 2017 (HR 744): This would amend the NLRA to protect employers from hiring union activists who seek only to organize ("salt") a union in that workplace.

Rewarding Achievement and Incentivizing Successful Employees Act (RAISE) Act (S. 155): This would amend the NLRA to permit employers to pay higher wages to their employees than provided for in a collective bargaining agreement.

National Right-to-Work Act (HR 785): This would preserve and protect the free choice of employees to form, join, or assist labor organizations, or to refrain from such activities.

Youth Access to American Jobs Act of 2017 (HR 1050): The Act would establish a pilot program to promote public-private partnerships among apprenticeships or other job training programs, local educational agencies, and community colleges.

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Workplace Bills Pending in Congress

There is no clear consensus, even among Republican lawmakers, about immigration reform, tax law changes, or the replacement of the Affordable Care Act. However, there are many other workplace issues Congress is still considering. They include:

Protecting Workplace Advancement and Opportunity Act (HR 4773): This would require the Secretary of Labor to nullify the proposed rule on defining the overtime exemptions for executive, administrative, professional, outside sales, and computer (IT) employees. It would also require an economic analysis with improved data on all employers, to minimize the impact on employers, before promulgating any similar rule. Finally, it would require US Department of Labor to provide a rule regarding the salary threshold exemption under the Fair Labor Standards Act (FLSA). In short, the outcome of the over-time rule changes is still uncertain. The only thing

that is clear at this point is that the proposed changes are not going into effect as proposed.

HERO Transition from Battlespace to Workplace Act of 2017 (HR 63): It would amend the Internal Revenue Code to allow employers a business-related tax credit of \$1,000 for hiring veterans and engaging in reintegration efforts.

Family and Medical Insurance Leave Act or the FAMILY Act (HR 947/S 337): This would provide paid Family and Medical Leave Act (FMLA) benefits to certain eligible individuals. FMLA leave is unpaid unless employers permit or require employees to use their accrued paid leave time. This bill would create a fund for paid FMLA to be administered by a new department within the US Social Security Administration.

Labor Relations First Contract Negotiations Act of 2017 (HR 156): This would amend the National Labor Relations Act (NLRA) to require the arbitration of ini-

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Original Living Wage Act of 2017 (HR 122): This would amend the FLSA to calculate the minimum wage based on the federal poverty threshold for a family of four, as determined by the Bureau of the Census. Currently the federal minimum wage is based on the level Congress sets after reviewing many sources of information.

Additionally, there has been proposed a joint resolution disapproving the rule submitted by the DOL relating to drug testing of unemployment compensation applicants (S.J. Res. 23). The rule sets a narrow definition of occupations that can be tested and constrains a state's ability to conduct drug testing in its unemployment system.

Workplace Bills Pending in Concord

While the Republicans control the White House, the Senate and the House of Representatives, partisan disputes and lack of consensus within the majority party's ranks are stalling any meaningful debate, compromise or progress on most matters before Congress. There has been more activity on workplace bills in Concord.

The New Hampshire Legislature has been busy considering several pending workplace bills. Many of these bills didn't make it out of committee or the House or Senate, but it is still helpful to review bills that were considered this session. They include:

State minimum wage (HB 115-

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FN): This bill would re-establish a state minimum wage and provide for annual adjustments starting in 2019. The minimum wage would increase from \$7.25 to \$9.50 on January 1, 2019 and then to \$12 on Jan. 1, 2020. Thereafter, increases would be determined by increases to the Northeast Consumer Price Index. This bill would also change the percentage of the minimum wage tipped employees receive from 45 percent to 60 percent and create a training wage for employees younger than 18. This bill was deemed inexpedient to legislate, ending consideration of the bill for this session.

Prohibiting an employer from using credit history in employment decisions (HB 130): This bill has been introduced in one form or another in the last few legislative sessions. It would establish the Employee Credit Privacy Protection Act, which would prohibit employers from using credit history in employment decisions, except when credit history is substantially related to the employee's current or potential job, and the employer complies with federal Fair Credit Reporting Act. This bill was deemed inexpedient to legislate, ending consideration of the bill for this session.

Permitting employers to pay wages

to employees weekly or biweekly (HB 194): This bill would permit employers to pay wages to employees weekly or biweekly. Currently employers must pay weekly unless the NH Department of Labor approves their request for bi-weekly, semi-monthly or monthly payrolls. This bill passed the House and was sent over to the Senate for consideration.

Criminal records checks in the employee application process (HB 442): This bill would prohibit employers from asking a job applicant about his or her criminal history prior to an interview. This bill was deemed inexpedient to legislate, ending consideration of the bill for this session.

Prohibiting discrimination based on gender identity (HB 478): The bill would define gender identity and would add gender identity among those classes protected against discrimination (employment and housing), including age, sex, race, and others. This bill received favorable consideration in the House but was tabled, preserving it for future consideration.

Right to work (HB 520): This bill would have prohibited collective bargaining agreements that require employees to join or contribute to a labor union as a

condition of employment. If it had been approved, New Hampshire would have been the only right-to-work state in New England. This bill failed to pass the House in a close vote.

Employer immunity for disclosure of certain worker employment information (SB 22): This bill would provide immunity from civil liability to an employer who, in good faith, discloses employment information about a worker to a prospective employer. This was intended to cover employment verification, evaluations, references and reasons for termination. This bill failed to make it out of the Senate Commerce Committee and was deemed inexpedient to legislate.

Eliminating the waiting period before eligibility to receive unemployment benefits (SB 226-FN): This bill was deemed inexpedient to legislate ending consideration of the bill for this session.

A family and medical leave insurance program (HB 628-FN): This bill would establish a system of paid family and medical leave insurance based on contributions from employees through payroll deductions. This matter has been retained in committee for further study.

Changes in this area of the law come at a fast and furious pace. Stay tuned!

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