

Highlights for week ending March 11, 2016

STATE OF VERMONT

After the mid-term break and week of town meetings, the legislature was back in full swing. Legislation was being pushed out of the House and the Senate to meet the “crossover deadline” of March 11 for bills other than budget, taxing and finance-related (that bill deadline is March 21). Anything that did not pass out of a committee to be heard on the House and Senate floor between now and the end of the session is considered dead, as this year is the second half of the biennium. There is speculation that the “ban the box” bill (H.261) previously highlighted will pass both chambers this year, and paid sick leave has already been signed into law by the Governor. It is uncertain as to if the recreational marijuana bill (S.241) will make much further headway this year, as Speaker of the House Shap Smith is predicting a wrap up of the legislature in late April to make way for the campaign season. It will surely be a busy one, as there are five gubernatorial candidates and six individuals running for the Lt. Governor position.

H.773 An act relating to classification of employees and independent contractors

The House Commerce and Economic Development Committee passed this bill with a vote of 11-0 after intense debate and testimony by early 70 witnesses. A nearly decade old court decision has muddied the independent contractor waters, and the legislature has been determined to provide clarity this year. There is a presumption in Vermont that a worker is an employee unless they meet very specific independent contractor criteria. The burden of proof falls on the employer, not the independent contractor, to prove that they are not an employee.

The bill seeks to tighten up the process for classifying independent contractors, and in its current form would create a formal system within the Department of Labor whereby individuals could register as an independent contractor. The independent contractor would sign a waiver as part of the process stating that they will not file a claim for workers’ compensation benefits from the employer, and there would be no liability to the employer for the independent contractor’s unpaid insurance premiums.

Unanswered questions from bill opponents include the following:

What happens if an independent contractor hires a subcontractor and does not require that they join the registry and sign a waiver? In this case there is the potential that the subcontractor could seek damages in a personal injury claim, and their employees could file workers’ compensation claims against the employer.

What would be done for enforcement for independent contractors who fail to register?

Where would the waivers be stored, and how can they be accessed by employers?

The bill will move to the House floor and to the full Senate next week.

In honor of “crossover” week, it makes sense to review the process of how these bills eventually become laws:

A bill is introduced by a member of the House or Senate (finance/spending bills must start in the House)

The bill has a first reading

The bill is referred to a House or Senate Committee, depending upon what member introduced the bill

The House or Senate Committee reports the bill to the full House or Senate

The bill has a second reading

There is debate on the bill and a first vote is held

The bill has a third reading, there is final debate and a vote

If the bill passes either the House or Senate, it is sent to the other chamber and the process repeats

If the House and Senate bills have differences, the bill goes to a Conference Committee

If the bills is passed by both chambers, it is signed into law or vetoed by the Governor

IN FEDERAL NEWS...

The Equal Employment Opportunity Commission (EEOC) just released data relative to the 90,000 charges it received in the last fiscal year. Retaliation claims made up the largest number at 44.5%, followed by Race at 34.7%, Disability at 30.2%, Sex at 29.5%, Age at 22.5%, National Origin at 10.6%, Religion at 3.9%, Color at 3.2%, Equal Pay Act at 1.1% and Genetic Information Nondiscrimination Act at 0.3%. Most of the lawsuits that were filed alleged violations of Title VII of the Civil Rights Act of 1964 or the Americans with Disabilities Act.

The number of charges overall increased last year, as did the recoveries to the EEOC by \$60 million compared to 2014. Over \$525 million was paid in to the EEOC by private companies and federal, state and local government in 2015.

For more information about the SHRM Vermont State Council Employment Law & Legislative Advocacy Update, please contact Shelley Field at shelley.field@casella.com or (802) 772-2215.