

Highlights for Week of March 6, 2017

STATE OF VERMONT

The Legislature has this week off for town meetings and some respite, and it marks the halfway point in the session. When lawmakers return there will be six weeks left to focus on the 2018 budget (currently an \$18 million gap) and to manage through recently introduced legislation. There have been over 500 House bills introduced, and over 100 in the Senate. It is unclear how many bills will pass as Governor Scott continues to state that he will not be supportive of initiatives that add new taxes, fees or surcharges, and that his main goal is to grow the economy and make Vermont more affordable.

On the top of the list for Human Resources professionals in Vermont is H.196, draft legislation relative to paid family leave. The bill proposes the following:

- Creation of a new state-run insurance program providing 12 weeks of family leave to employees
- Mandates a payroll tax of up to 1% (½ contributed from employees and ½ from employers)
- The law would be applicable to all employers, with no small business exemption

Concerns have been raised that Vermont businesses have not had time to react to the recently initiated paid sick leave law, and more time is needed before additional paid leave is contemplated for Vermont workers.

Please see the full bill at the following link:

<http://legislature.vermont.gov/assets/Documents/2018/Docs/BILLS/H-0196/H-0196%20As%20Introduced.pdf>.

If you wish to provide specific comments and feedback relative to H.196, please send it to shelley.field@casella.com.

Three House Bills Related to Independent Contractors are before the House Committee on Commerce and Economic Development:

H.119

An act relating to the classification of employees and independent contractors

Statement of purpose of bill as introduced:

This bill proposes to establish a common definition of “independent contractor” for the workers’ compensation and unemployment insurance statutes.

H.223

An act relating to employee classification and transitional assistance for beneficiaries of public assistance

Statement of purpose of bill as introduced:

This bill proposes to amend the definitions related to independent contractors in the workers’ compensation and unemployment insurance laws to: provide for notice of the requirements regarding employee classification at worksites; permit the Department of Labor to enter an employer’s premises for the purposes of investigating compliance with the workers’ compensation and unemployment compensation statutes; permit the Department to obtain an injunction to enforce a stop-work order related to a violation of the workers’ compensation statute; clarify the requirements for consultation regarding debarment of employers that have violated the wage and hour, workers’ compensation, or unemployment compensation statutes; create an Employee Classification Task Force and; provide beneficiaries of public assistance programs with transitional assistance once they begin earning income, in order to enable their transition from public assistance to the workforce.

H.323

An act relating to the classification of employees and independent contractors

Statement of purpose of bill as introduced:

This bill proposes to amend definitions related to independent contractors in the workers' compensation and unemployment compensation statutes, to provide for notice of the requirements regarding employee classification at worksites, to permit the Department of Labor to enter an employer's premises for the purposes of investigating compliance with the workers' compensation and unemployment compensation statutes, to permit the Department to obtain an injunction to enforce a stop-work order related to a violation of the workers' compensation statute, to clarify the requirements for consultation regarding debarment of employers that have violated the wage and hour, workers' compensation, and to create an Employee Classification Task Force.

Testimony will resume on all three independent contractor bills the week of March 13, 2017.

Also before the House Committee on Commerce and Economic Development:

H.461

An act relating to workers' compensation

Statement of purpose of bill as introduced:

This bill proposes to require workers' compensation insurance carriers to offer short-term and seasonal policies, and to require the Commissioner of Financial Regulation to study measures to make workers' compensation more affordable for seasonal employers, as well as mechanisms to reduce the cost of providing workers' compensation through the assigned risk pool.

H.462

An act relating to social media privacy for employees

Statement of purpose of bill as introduced:

This bill proposes to prohibit an employer from requiring or requesting that an employee or applicant disclose personal social media account information.

The SHRM Vermont Council offered testimony on this bill at the request of the Committee Chairperson, and made the following suggested additions to the draft language:

1. Firstly, the ability for an employer to request an employee divulge social media content if the employee has posted confidential or proprietary business information of the employer.
2. Secondly, the ability for an employer to request an employee divulge social media content if the employee has posted discriminatory or disparaging content about another employee, or disparaging content about the employer, if good cause exists to do so.

Before the House Committee on General, Housing and Military Affairs:

H.466

An act relating to good cause employment

"It shall be an unlawful employment practice for an employer to discharge an employee for other than good cause shown. As used in this subdivision, 'good cause' means either a reasonable, good-faith reason for discharge related to a legitimate business reason or that the employee has been employed by the employer for less than 90 days. 'Good cause' does not include reasons for discharge that are trivial, arbitrary, capricious, or otherwise unrelated to a legitimate business reason."

**Currently, an employee is deemed to be “at will” in 49 of 50 states unless party to an agreement with their employer stating otherwise. This draft legislation would eliminate the “at will” status of Vermont workers.

Two Draft Bills before the Senate Committee on Economic Development, Housing and General Affairs:

S.94

An act relating to promoting remote work and flexible work arrangements

Statement of purpose of bill as introduced:

This bill proposes to direct the State to enhance opportunities for remote work and workplace flexibility within State government, to create a tax credit for employers that adopt workplace flexibility and telecommuting programs, to direct the Secretary of State and government partners to design a system to simplify interactions with businesses that employ remote workers in Vermont, to expand and improve infrastructure and support for remote workers in Vermont, to direct the Secretary of Administration to examine the potential for establishing remote worksites that are available for use by both State and private-sector workers, to direct the Commissioner of Labor to develop a plan to expand educational and training programs that address skill shortages in Vermont’s workforce, and to encourage the deployment of broadband Internet access in rural, high-cost areas of the State to promote economic development.

S.110

An act relating to equal pay

Statement of purpose of bill as introduced:

This bill proposes to create record-keeping and reporting requirements in relation to the equal pay provisions of Vermont’s Fair Employment Practices Act and to require the Commissioner of Labor to analyze and address the presence of gender and other bias in State-supported training programs.

FEDERAL DEPARTMENT OF LABOR NOMINEE

The nominee for the Secretary of the Department of Labor, Alexander Acosta, comes with conservative credentials, but has a balanced record in the way he has restricted the ways in which employers may treat employees. Acosta is currently the dean of the Florida International University’s College of Law. Other posts include U.S. attorney for the Southern District of Florida, assistant attorney general to the Justice Department’s Civil Rights Division and acting as a member of the National Labor Relations Board.

During Acosta’s term on the NLRB, he signed a number of pro-employer decisions critical of unions. He is pro-immigration, and has stated that the U.S. economy needs immigrant labor in the areas of construction and agriculture. Stay tuned on his confirmation hearings...

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