

Texas Legislative Roundup: New Laws Impacting Employers

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The Texas Legislature's 86th session adjourned on May 27, 2019, and there is little likelihood that the governor will call a special session. The legislature primarily focused on educational reforms this year. Regarding employment matters, most observers expected the legislature to adopt laws preempting any attempt by municipalities to pass paid sick leave laws. While the legislature failed to pass any such law, they did pass other laws impacting the employer-employee relationship. Below is a list of those new laws.

Senate Bill 1978 – Religious Discrimination Protection. “Notwithstanding any other law, a governmental entity may not take any adverse action against any person based wholly or partly on the person’s membership in, affiliation with, or contribution, donation, or other support provided to a religious organization.” In effect, this law prohibits state and local governments from withholding or terminating contracts, licenses, or employment to persons or organizations based upon association or support of any religious organization. The law also prohibits altered tax treatment for the same reason, as well as other forms of “adverse action,” as defined in the law.

The new law provides for the recovery of compensatory damages, injunctive relief, and attorneys’ fees, but not punitive damages. Importantly, the law also provides that, unlike a claim under Chapter 21 of the Texas Labor Code, an individual does not have to exhaust administrative remedies before filing suit claiming religious discrimination.

House Bill 918 – Documentation for Released Inmates. This law requires the Texas Department of Criminal Justice to provide relevant documentation to an inmate upon his or her discharge or release from prison to assist the individual in obtaining postrelease employment. This documentation includes, to the extent applicable, a copy of the inmate’s job training record, the inmate’s work record, and for an inmate who has completed a prerelease program “a resume that includes any trade learned by the inmate and the inmate’s proficiency at that trade and documentation that the inmate has completed a practice job interview.”

House Bill 696 – Operation Welcome Home. This law creates a program intended “to expedite the entry of veterans and military service members into the workforce through the use of enhanced employment services.” This program will “build partnerships between military transition centers and

local workforce development boards to ensure the availability of employment services, including services related to: (1) education; (2) career technical training; and (3) entrepreneurship.” This law also creates a Texas Veterans Leadership Program, which is to be staffed by veterans and “serve as a resource and referral network connecting veterans with the resources and tools they need to lead productive lives and enjoy the full benefits of the society they have willingly served.”

House Bill 2240 – Payroll Cards. This law amends the Texas Labor Code to allow employers to use electronic payroll cards to pay employees, subject to a few requirements. Employers must provide written notice of the payroll card plan and any fees associated with the program at least 60 days before the first electronic funds are issued. Companies must also provide a form for employees to opt out of the payroll card program and issue the selected alternative payment method as soon as practicable, but no later than 30 days after an employee submits a request.

House Bill 541 – Right to Express Breast Milk. Texas law already provided for a mother’s right to breastfeed in public. This law was amended to make clear that the same right extends to the pumping of breast milk anywhere in public. As a reminder, the Fair Labor Standards Act requires employers to provide most nonexempt employees with a “reasonable break time” and a private space, other than a bathroom, for the expression of breast milk, through the child’s first birthday.

Senate Bill 370 – Protections for Jury Service. This law expands employment protections for employees serving on juries by prohibiting employers from threatening, intimidating, coercing, or discharging any permanent employee based upon his or her jury service.

House Bill 3703 – Texas Compassionate Use Act. Effective immediately, qualified physicians can prescribe medical marijuana products to treat epilepsy, seizure disorders, multiple sclerosis (commonly known as MS), spasticity, amyotrophic lateral sclerosis (commonly known as ALS or Lou Gehrig’s disease), autism, terminal cancer, and incurable neurodegenerative diseases. The patient must be a permanent resident of Texas. Under the prior version of the law, medical marijuana was available only to patients with intractable epilepsy, a seizure disorder. Notably, the act does not contain any employment protection for qualified patients that would restrict an employer’s ability to discipline or terminate an employee who tests positive for marijuana.

House Bill 1325 – Hemp/Cannabidiol (CBD). Effective immediately, Texans may legally purchase hemp or hemp-derived products containing less than 0.3 percent of THC, or tetrahydrocannabinol, the psychoactive compound found in cannabis plants. Additionally, the law allows Texas to set up a federally approved program for farmers to grow hemp as an industrial crop, including procedures for sampling, inspection, and testing.

Key Takeaways

The laws that will likely have the most practical, day-to-day impact upon employers will be the revised Compassionate Use Act and hemp/CBD law. Employers may want to prepare for an increase in the number of medical notes and/or doctor’s prescriptions presented by employees as authorization for the use of medical marijuana.

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