

Potential Law Changes in Store for Virginia Employers

By Jessica Summers

The Virginia General Assembly's 2015 Session convened on January 14, 2015 and will run through February 28, 2015. During this session the House and Senate have been considering a number of bills that, if enacted, could have important implications for Virginia employers. As you can see, the prognosis for many of these bills are uncertain, however, it is important for employers to be aware of what types of issues the Assembly is considering this year.

Prohibiting Disclosure of Social Media Accounts

One of the more uncontroversial labor and employment related bills introduced this session is HB 2081. HB 2081 would prohibit employers from 1) requiring current or prospective employees to provide the employer with their usernames and passwords for their social media accounts, 2) requiring employees to add another employee, supervisor or administrator as a contact on the employee's social media account, or 3) requiring employee to change their privacy settings on their social media account. The bill was passed unanimously by the Virginia House on February 2, 2015 and will now move to the Virginia Senate for consideration.

Given the unanimous support for this bill in the Virginia House, there is a good chance that it will also pass the Virginia Senate and become law. This bill, which is similar to bills that have been passed in other states and local jurisdictions, including Maryland, is unlikely to have a significant impact on most employers. However, if it passes, Virginia employers will need to make sure that supervisors, managers and other involved in hiring and managing employees are aware of, and compliant with, this law.

Safety Reporting Requirements

Another bill that has received widespread support is HB 1681 which would amend Virginia's employer safety reporting requirements. Under existing law, Virginia employers are only required to report work-related fatalities or work-related hospitalization of three or more employees. HB 1681 would expand these provisions to require employers to report any work-related hospitalization of one or more employees, as well as to report any amputation or loss of an eye resulting from a work-related incident to the Commonwealth's Department of Labor and Industry within eight hours of the incident.

This bill was passed unanimously by the Virginia House on January 28, 2015, and has been subsequently referred for consideration by the Senate Committee on Commerce and Labor. Again, given the strong support in the House, there is a strong chance this bill will pass the Senate and become law. For Virginia employers, if this bill becomes law, the biggest change that they will need to be aware of and prepared for is the obligation to report any employee hospitalization that is the result of a work-related injury. This will mean that employers, for whom work related incidents resulting in death or the hospitalization of at least three employees are rare or unheard of, will need to educate themselves about the reporting requirements. They would now be required to report the work-related hospitalization of any employee, which is sure to be a far more common occurrence.

Minimum Wage

On the more controversial side of things, there were four different bills (two in the House and two in the Senate) introduced this session to change the Virginia minimum wage, which is currently tied to the federal minimum wage.

SB 681

In the Virginia Senate, the first bill, SB 681, would increase the Commonwealth's minimum wage from the federal minimum wage of \$7.25 per hour to \$8.00 per hour on July 1, 2015, \$9.00 per hour on July 1, 2016 and \$10.10 per hour on July 1, 2017. These stepped up changes would, of course, only apply in the absence of any future changes raising the federal minimum wage above these rates.

On January 19, 2015, the Senate's Commerce and Labor Committee voted 11-3 to "pass by indefinitely" on this bill. Under the procedures of the Virginia General Assembly, to "pass by indefinitely" means that the Committee can reconsider the bill later in the session or choose not to take any further action on it, at which point the bill will be dead. Generally, a pass by indefinitely suggests that there is not enough support in the Committee to pass the bill at that time and is not a positive sign for the bill's potential progress. Thus, it is not very likely that SB 681 will progress further in this session.

SB 704

Taking a slightly different course, the second bill in the Virginia Senate, SB 704, would implement a process to allow localities to establish their own local minimum wage by referendum. Under this bill, localities seeking to establish their own local minimum wage would be required to establish a minimum wage of at least \$8.25 per hour commencing July 1 after enactment and increasing to \$9.25 per hour after 12 months and \$10.50 after 24 months.

On January 26, 2015, the Senate's Commerce and Labor Committee also voted (11-4) to "pass by indefinitely" on this bill. As a result, the prospects of any minimum wage bill coming out of the Virginia Senate this term are relatively low.

HB 1512

The first House bill on the minimum wage, HB 1512, would increase the Commonwealth's minimum wage from the federal minimum wage to \$15.15 effective July 1, 2015. Thereafter, the bill would instruct that the \$15.15 minimum wage be increased based on the consumer price index, until and unless federal minimum wage is increased above that point.

On January 27, 2015, the House Committee on Commerce and Labor tabled the bill, meaning that the Committee's consideration of the bill has been indefinitely postponed. This too is an indication that the Committee has concerns or disputes on the bill and generally means that passage of the bill out of the Committee is unlikely.

HB 1654

Adopting almost exactly the same structure and terms as SB 681, the second House minimum wage bill HB 1654 would increase the Commonwealth's minimum wage from the federal minimum wage of \$7.25 per hour to \$8.00 per hour on July 1, 2015, \$9.00 per hour on July 1, 2016 and \$10.00 per hour on July 1, 2017.

This bill was also tabled by the House Committee on Commerce and Labor on January 27, 2015, indicating that we are also unlikely to see a minimum wage bill out of the House.

Paid Sick Leave

Another House bill which is still on the table (and therefore worth monitoring), but which appears to be facing an uphill battle, is HB 2008. Of all the labor and employment related bills proposed this session, HB 2008, if enacted, would likely have the biggest impact on the broadest set of Virginia employers. HB 2008 would require private employers with 25 or more full time employees (or full time equivalents) to provide employees with at least one hour of paid sick leave for every thirty hours worked that the employee could use for their absences resulting from their own medical needs or those of a family member. While the bill would not place a limit on how much paid sick leave an employee could accrue, it would allow employers to cap an employee's annual sick leave use at twenty four hours or three days. Under the bill, each employee would be entitled to begin using their accrued paid sick leave within 90 days of commencing employment. The bill would further prohibit discrimination or retaliation against an employee for requesting paid sick leave and would grant the Commissioner of Labor and Industry administrative and enforcement authority, including the authority to impose civil penalties for violations.

On January 27, 2015, the House Committee on Commerce and Labor tabled HB 2008. Thus, while the bill is not dead, its chances of success are very low. If this bill were to become law, Virginia employers with over 25 employees would need to take a close look, and revise, existing policies, as the bill would, among

other things, require covered employers to provide paid sick leave to part time employees, which many employers currently do not.

Equal Pay

SB 772, which was introduced in the Virginia Senate this session, would expand Virginia's equal pay laws.

Currently, Virginia law prohibits employers from compensating male and female employees differently solely on the basis of their sex. SB 772 would expand existing law to prohibit employers not only from paying employees differently on the basis of sex but also from providing any superior benefits or privileges on the basis of sex. The bill would further eliminate the existing provision which currently excludes employers who are covered by the federal Fair Labor Standards Act from being subject to the Commonwealth's equal pay laws. The bill would also add language prohibiting an employer from taking adverse employment action against an employee for sharing information about his or her wages, benefits, and privileges, or another employee's wages, benefits and privileges (except where the employee has learned this information about another employee as part of his or her essential job functions). Finally, the bill would increase the damages that an employee could recover in the event of a violation from two times to three times the amount of disparate wages and privileges and add an allowance for attorney's fees and costs if the employee prevails on the merits.

At this time, the likelihood of this bill being passed in this session is relatively low. On January 26, 2015, the Senate Commerce and Labor Committee, which was considering the bill, voted 10 to 5 to "pass by indefinitely."

Discrimination on the Basis of Sexual Orientation

Another discrimination related bill, HB 1643 would add sexual orientation, defined for the purposes of the bill as "a person's actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity or expression" to the statuses protected by the Virginia Human Rights Act, thereby prohibiting employment discrimination on the basis of sexual orientation. Both of Virginia's northern neighbors, Maryland and the District of Columbia, have already passed laws to prohibit discrimination on the basis of sexual orientation, while none of Virginia's western and southern neighbors, Kentucky, North Carolina, Tennessee or West Virginia, recognize sexual orientation as a protected status. Some Virginia localities, including Arlington County, have adopted local prohibitions against sexual orientation discrimination in employment.

On January 29, 2015, the Subcommittee of the House Committee on General Laws, to which HB 1643 was assigned, recommended that the bill be tabled. Again, this suggests that this bill is unlikely to move any further during this session. Regardless of whether this bill is passed, Virginia employers should be mindful of the fact that in a December 15, 2014 memorandum to staff of the U.S. Department of Justice outgoing U.S. Attorney General Eric Holder announced his determination that discrimination on the basis of gender identity is prohibited under Title VII.

Abusive Work Environment

The final labor and employment related bill still open for consideration by the General Assembly this term is HB 2089. This bill would prohibit employers from subjecting an employee, or allowing an employee to be subjected to, an "abusive work environment." For the purposes of the bill, an "abusive work environment" is defined as "a workplace in which an employee is subject to abusive conduct by the employer, employees of the employer, or contractors of the employer that is severe enough to cause physical or psychological harm to the employee." In turn, the statute defines "abusive conduct" as "conduct of an employer or employee in the workplace that a reasonable person would find hostile" and provides a number of examples of such conduct. The bill would further prohibit retaliation against an employee who reports, or participates in the investigation of, an abusive work environment, and provides a private cause of action for employees who have been subject to an abusive work environment or related retaliation.

On January 26, 2015, the Civil Law Subcommittee of the House Committee for Courts of Justice recommended tabling the bill, thereby making its passage unlikely.