

Issues & Answers

LABOR & EMPLOYMENT ALERT

Arizona Labor & Employment Legislation 2001

By Michele L. Tyler

The 2001 Regular Legislative Session had the potential to significantly increase labor costs for employers and subject employers to more litigation. For example, seven bills were introduced that would have expanded Arizona's civil rights laws by adding new protected classes. Under these proposed measures, an Arizona employer would have been liable for discrimination on the basis of mental disability, sexual orientation, and gender identity. Although most Arizona employers already comply with the federal Americans with Disabilities Act's protections for individuals with mental disabilities, the addition of protected classes for sexual orientation and gender identity could have subjected Arizona's employers to lawsuits that employers in most all other states do not face. Some of these proposals would also have doubled the statute of limitations and exposed employers to punitive damages awards in state court, where a jury verdict need not be unanimous.

Other proposed legislation could have raised the weekly maximum benefits for unemployment compensation, extended unemployment compensation benefits to some individuals who were not unemployed, and required employers to pay large sums in severance pay, benefits, and retraining expenses in the event the company transferred work to a "low wage foreign country." Employer groups and their legal counsel successfully fought back the worst of the proposed legislation - for now. We expect, however, to see most of these proposals again next year.

This document summarizes the most significant labor and employment practice-related bills passed by the Arizona Legislature and signed by the Governor in 2001. This summary does not include bills that primarily affect public employers. The summaries provided below are intended only to give a synopsis of the content of each bill. Please call Michele Tyler at (602) 916-5391 or any other member of Fennemore Craig's Labor and Employment Practice Group at (602) 916-5000 if you have comments or questions on any of the bills, or would like copies of any of the bills.

The Legislature adjourned *sine die* on May 10. Therefore, the effective date for all bills not carrying an emergency clause, or a retroactive or delayed effective date, is noon on August 9, 2001.

Unemployment Insurance; Job Training Tax: HB 2151 - This legislation provides that an Indian tribe with employees is an employer for purposes of Arizona law imposing a tax on employers to pay unemployment benefits. The bill also exempts certain private employers (based on reserve ratios and assigned unemployment tax rates) from the job training tax until a federal excise tax is reduced to six percent or less.

The Governor approved HB 2151 on February 28, 2001. The act contained an emergency clause and became effective immediately upon the signature of the Governor. (Laws 2001, Chapter 3).

"Blacklisting Statute": HB 2120 -

This legislation amends Arizona's "blacklisting" statute to add mortgage bankers and brokers to the group of employers who, upon request by a bank, savings and loan, credit union, or other escrow agent may provide a written employment reference advising of an applicant's involvement in any theft, embezzlement, or misappropriation that has been reported to federal authorities or to the State Banking Department.

The Governor approved HB 2120 on March 19, 2001. The effective date of this legislation is August 9, 2001. (Laws 2001, Chapter 17).

Child Support; Employer Cooperation: SB 1436 - This bill expands the law requiring employers to provide certain employee information in order to assist in the collection of child support payments. The new law requires employers to provide information to any party to a "proceeding" for child support or maintenance.

The Governor approved SB 1436 on April 16, 2001. The effective date of this legislation is August 9, 2001. (Laws 2001, Chapter 121).

Industrial Commission; Procedures:

HB 2090 - This legislation amends the workers' compensation laws by, among other things: (1) eliminating a provision relating to late filing notice; (2) providing that no insurance product may be marketed, offered, or sold as workers' compensation insurance, if it does not

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comply with law; (3) providing that no employer may purchase insurance that does not comply with the law; and (4) increasing the time period in which to request a hearing from 60 days to 90 days.

The Governor approved HB 2090 on April 17, 2001. The effective date of this legislation is August 9, 2001. (Laws 2001, Chapter 201).

Day Labor Agencies: SB 1494 -

This legislation adds a new article to the labor code regulating day labor providers. Excluded from this article are providers of farm labor, temporary agencies, union hiring halls and labor bureaus. Day labor agencies must pay workers with commonly accepted instruments payable in cash and provide the workers with details regarding deductions from their wages. Day labor agencies may not make deductions from a worker's pay other than those required by law, such that the worker's wage, after deductions,

falls below the federal minimum wage. A day labor agency may not interfere with the worker's right to accept a permanent position.

The Governor approved SB 1494 on April 26, 2001. The effective date of this legislation is August 9, 2001. (Laws 2001, Chapter 252).

Victim Time-off: HB 2223 - Among other changes to crime-related statutes, this omnibus crime bill requires employers with 50 or more employees to give time off to an employee who is a victim of a crime to attend court-related proceedings, unless the leave would impose an undue hardship on the employer. The employer is not required to compensate employees for the time off and the employee may elect or the employer may require the employee to use paid leave for the time off. In addition, this law requires employers to keep confidential records of leave taken and amends the Employment Protection Act to provide that an employee may

bring a wrongful termination claim for discharge based on the exercise of victim's leave rights.

The Governor approved HB 2223 on May 4, 2001. The effective date of this legislation is August 9, 2001. (Laws 2001, Chapter 334).

Sex Offense Repeals: HB 2016 -

In addition to repealing the statutes prohibiting sodomy, cohabitation, adultery, and "lewd and lascivious acts," this legislation amends the state income tax code definition of "dependent," effectively allowing taxpayers to claim a "significant other" as a dependent, beginning in 2001. Accordingly, human resources and accounting departments may see an increase in changes to state withholding forms A-4.

The Governor approved HB 2016 on May 8, 2001. The effective date of this legislation is August 9, 2001, but the tax law change is effective for all of tax year 2001. (Laws 2001, Chapter 382). ■

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